

DAHLCH1

Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 CHEVRON CORPORATION,

4 Plaintiff,

5 v.

11 Cv. 0691 (LAK)

6 STEVEN R. DONZIGER, et al.,

7 Defendants.

8 -----x

October 17, 2013
9:40 a.m.

10 Before:

11 HON. LEWIS A. KAPLAN

District Judge

12 APPEARANCES

13 GIBSON, DUNN & CRUTCHER LLP
14 Attorneys for Plaintiff

15 BY: RANDY M. MASTRO
ANDREA E. NEUMAN
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24 BY: JULIO C. GOMEZ
25

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1 (Trial resumed)

2 THE COURT: Good morning, everyone.

3 I want to take up in part, and only in part, one
4 matter that is pending and that is the matter of the witnesses
5 identified as Doe 3 and Doe 4.

6 First of all, my understanding is that neither of the
7 declarations or affidavits of those two witnesses has been
8 submitted in support of or in opposition to a summary judgment
9 motion. Am I correct?

10 MR. MASTRO: That's correct, your Honor.

11 THE COURT: Okay. For present purposes, and subject
12 to possible change as I'll indicate, the affidavits of those
13 two witnesses are to be made available to Mr. Friedman and
14 Ms. Littlepage and only to them. I understand Mr. Gomez has
15 them. I hereby direct them to keep those documents and all of
16 the information they contain in total confidence to the two of
17 them. They are not to disclose the documents or the
18 information they contain or any part of it to anyone else,
19 including Mr. Donziger, without prior written approval of the
20 Court.

21 I find for reasons that are largely set out in my
22 February 21 opinion with respect to declarations of witnesses
23 identified as Doe 1 and Doe 2 that there would be a substantial
24 risk of ostracism and economic retaliation and an unacceptable
25 risk of physical retaliation against these two witnesses if

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1 their identities became more broadly known.

2 I am going to write on this, and this is simply a
3 brief summary statement. I will entertain any proposals by the
4 defendants to expand the universe of individuals who may be
5 given access to all or part of the information. I, of course,
6 at the moment have an advantage over defense counsel because I
7 know what it is and who they are and at least Mr. Friedman and
8 Ms. Littlepage don't.

9 I do note that with respect to the Doe 1 and Doe 2
10 declarations, which are essentially now I gather academic
11 because they're not going to be called as witnesses, that I
12 made clear ten months ago that I would entertain applications
13 by the defendants with respect to broader use of that material
14 or broader dissemination and none has ever been made.

15 I am extremely sensitive to the issues, both ways,
16 always, on this. And I hope that we can reach a solution more
17 amenable to the defendants, but there are very serious
18 interests on the other side as well.

19 None of this is intended to make any ruling with
20 respect to what happens if these witnesses or either of them
21 appears. I'll deal with that question separately and as soon
22 as I can.

23 Mr. Friedman.

24 MS. FRIEDMAN: Your Honor, I appreciate you allowing
25 us to look at those. And what I wanted to ask is if it would

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1 be permissible -- again, having not seen it, I don't know
2 exactly what position we'll take, but I could imagine that we
3 might want to apply to the Court in camera so as not to reveal
4 our own thought processes about this material to the plaintiff.

5 Would we be permitted, for example, if what we said
6 was we'd like to talk to person A about this for the following
7 reasons, could we submit that to you in camera so that we're
8 not revealing to the other side how we're thinking about these
9 things?

10 THE COURT: You can certainly file such an application
11 under seal. I think the question of doing it in camera is not
12 one I'm prepared --

13 MS. FRIEDMAN: I'm sorry, I meant under seal.

14 THE COURT: You meant ex parte? Did you mean under
15 seal with service on the other side or do you mean ex parte?

16 MS. FRIEDMAN: Ex parte so that we could say to you
17 here's why we want to talk to witness A about this or here's
18 why we want to expand the scope. Part of this, of course, goes
19 into our work product privilege and our thinking about handling
20 these witnesses.

21 THE COURT: Well, I'll cross that bridge when we get
22 there. If you have an application, I assume you can submit it
23 under seal. I will allow it under seal in the first instance
24 but available at least on a redacted basis to counsel. And
25 then we'll deal with the question of whether any redactions

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1 ought to be disclosed.

2 MS. FRIEDMAN: Thank you.

3 THE COURT: Mr. Mastro.

4 MR. MASTRO: Thank you, your Honor. I appreciate your
5 Honor's ruling and we will make sure that Ms. Littlepage and
6 Mr. Friedman get those declarations this morning right away.

7 The issue, your Honor, is this and it's why we filed
8 the notice we did last night. These witnesses are very afraid
9 about testifying here. They would need to come here on short
10 notice and can't stay here for an extended period or it will be
11 obvious who they are. And as I said in the notice, at least
12 one of them is prepared to, we believe, to come here as soon as
13 possible, give his or her testimony in a protected environment
14 so security and confidential identity --

15 THE COURT: I read what you submitted, which you're
16 kindly repeating for me.

17 MR. MASTRO: So it could, we believe that with your
18 Honor's ruling and whatever your Honor would decide about the
19 protections for when he or she testifies, that person could be
20 here as early as Monday and that, unfortunately, there are a
21 lot of pressures going on in Ecuador. The witnesses will
22 testify about those pressures. There's concern that they will
23 be intimidated into not testifying. So if there's any way to
24 address the protections for testimony, the person could be here
25 as early as Monday.

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1 THE COURT: Look, I got -- I know the motion is there.
2 I know the little reminder saying, Judge, please get to it
3 arrived last night. I understand you're saying it again this
4 morning. I'm aware of all this.

5 MR. MASTRO: Okay. I appreciate it, your Honor. The
6 witness in question has said yes, then no, then yes, then no.
7 Thank you, your Honor.

8 THE COURT: Thank you.

9 MR. MASTRO: Your Honor, there are some other
10 housekeeping matters, but it can wait until the end of the day.

11 THE COURT: Good.

12 MS. FRIEDMAN: Your Honor, I have two matters I would
13 like to address now if that's all right. The first one has to
14 do with the pro hac admission of Mr. Rainey Booth. We have --
15 I'll spare the Court the long story. The short story is we
16 made several mistakes in trying to get him admitted through the
17 electronic process, the last of those was he's admitted in
18 Florida and Alabama. We got an Alabama certificate of good
19 standing from the state bar instead of the state supreme court.
20 Just this morning, the state supreme court --

21 THE COURT: Why do I need to know this?

22 MS. FRIEDMAN: I'd like to move his admission now
23 because one of the witnesses --

24 THE COURT: Look, I told you. I'm going to allow him
25 to examine. But the clerk's office has to be happy or else the

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1 computer will quiver and shake and bells and whistles will
2 happen and we don't want that to happen.

3 MR. DONZIGER: Your Honor, can I be heard about
4 something. I just want to be clear, first of all, I'm
5 cocounsel to Mr. Friedman and Ms. Littlepage still. The
6 order -- you didn't let me out of the case.

7 I want to be clear that your decision about giving the
8 Doe 3 and Doe 4 affidavits just to Mr. Friedman and
9 Ms. Littlepage is happening under my objection, and I want to
10 maintain that objection.

11 I understand there might be things happening in
12 Ecuador. I want to be very clear I have nothing to do
13 personally with anything that these people have put forth with
14 regard to threats that these witnesses might feel.

15 THE COURT: Mr. Donziger.

16 MR. DONZIGER: I want to be very clear about that and
17 I feel like the suggestion was made otherwise.

18 THE COURT: Mr. Donziger, this is unnecessary. Thank
19 you.

20 MS. FRIEDMAN: Thank you, your Honor.

21 Your Honor, one last thing that has to do with the
22 film clips that have been submitted to the Court by the
23 plaintiffs. If I could approach the bench?

24 THE COURT: All right. So you've handed me a document
25 marked Plaintiff's Exhibit 4A.

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1 MS. FRIEDMAN: I saw you were reading.

2 Your Honor, there are a series of film clips that have
3 been submitted to the Court as Plaintiff's Exhibits. We had
4 known that the way these had been treated were statements had
5 been cut off either before or after clips, but last night we
6 were looking at one of the early clips for a different reason
7 and basically saw -- if you see what's on the left is what's
8 been submitted to the Court. What's on the right is the actual
9 transcript in the film. And if one were to look at the film
10 that was submitted to the Court not knowing that it had been
11 edited, you would think that the yellow was the full statement
12 or the one on the left was. So it's been edited on the film.
13 It's also been edited on the transcript submitted to the Court
14 to, we believe, create a misleading impression.

15 What we would -- and I'm sure in its spare time the
16 Court is not reading and watching these clips at this point,
17 but what we would like is an opportunity to ask the Court not
18 to read or view the clips and allow us at least over the
19 weekend to present -- we haven't had a chance to go through all
20 of them. This is like one of the first ones we looked at and
21 we saw this problem. We wanted to bring it to the Court's
22 attention and ask for some time to take up, if it's a bigger
23 issue than one clip, time to take that up on Monday.

24 THE COURT: Look, obviously, I expect you will make
25 whatever objections you have. Indeed, I think we set up a

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1 schedule for doing that, didn't we?

2 MS. FRIEDMAN: In a sense, yes. But there's a -- yes.
3 I'll leave it at that.

4 MR. BRODSKY: Your Honor, just for your information on
5 that, we provided these clips months ago to the defense. We've
6 been waiting for their comments. They haven't provided us with
7 any counter.

8 THE COURT: Look, I would like to try the case instead
9 of having this endless conversation about trying the case.

10 MR. MASTRO: Thank you, your Honor.

11 THE COURT: Could we try the case?

12 MR. BRODSKY: Yes, your Honor.

13 THE COURT: Okay. Mr. Russell, come on back.
14 You're still under oath, Mr. Russell. Good morning to
15 you too.

16 THE WITNESS: Good morning, sir.

17 THE COURT: Ms. Littlepage.

18 MS. LITTLEPAGE: Yes, your Honor. May I proceed?

19 THE COURT: Please.

20 DAVID LLOYD RUSSELL, resumed.

21 CROSS-EXAMINATION (cont'd)

22 BY MS. LITTLEPAGE:

23 Q. Good morning, Mr. Russell.

24 A. Good morning.

25 Q. Do you have the white book in front of you?

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Russell - cross

1 A. Yes.

2 Q. Yesterday we were talking about tab 2 your cost estimate
3 that was put together in October of 2003. Are you with me?

4 A. I am.

5 Q. Okay. If you turn to page 2 of the cost estimate.

6 THE COURT: Plaintiff's Exhibit 2414.

7 MS. LITTLEPAGE: Yes, sir.

8 Q. There's a part of your report where it is entitled remedial
9 techniques which may be applicable and discussion.

10 First of all, can you define for us what you meant by
11 remedial techniques?

12 A. When one goes to remove contaminants from the soil or from
13 water, there are a number of engineering and scientific methods
14 to do that; and the selection of those or the optimization of
15 those is not necessarily one process, but there are several
16 processes which can be selected.

17 Q. And in your cost estimate did you indicate that there were
18 specific things that would cost money that you were not
19 considering in this estimate?

20 A. As I recall, I believe I did.

21 Q. And is one of them -- it appears that one of them is that
22 you did not include cost for infrastructure; is that fair?

23 A. If I may refer to page 3 of that exhibit, there is a line
24 there that says additional infrastructure. Upgrading
25 infrastructure and other supporting -- support including

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Russell - cross

1 laboratory.

2 So to a certain extent I did address infrastructure.
3 The infrastructure which might be involved may include such
4 things as trying to get access across some of the rivers. At
5 that time there were several bridges that were in very poor
6 repair, and I was conscious of the fact that some of the
7 remedial techniques would require heavy equipment.

8 Q. And did you note that in your cost estimate that there were
9 some costs for infrastructure that you were not including in
10 your cost estimate?

11 MR. BRODSKY: Your Honor.

12 THE COURT: That's not what he said at all.

13 MR. BRODSKY: And the document speaks for itself, your
14 Honor.

15 THE COURT: Well, that's the second point.

16 Next question.

17 MS. LITTLEPAGE: Yes, sir.

18 Q. If you look at page 2, can you explain to me what you meant
19 when you wrote to the extent that access by this equipment is
20 an issue, the cost may increase because I have not added any
21 cost factors for infrastructure including -- and you gave a
22 list of the specific things you were not including. Is that
23 fair?

24 A. That is correct.

25 Q. Okay. And then if you go to the bottom of the page under

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Russell - cross

1 groundwater treatment, did you also indicate that you were not
2 including an estimate for alternative sources of clean water?

3 THE COURT: Sustained. I made it very clear. We're
4 not just going to have the lawyers saying does the document say
5 X and the witness say, oh, yes, it says X. We're just not
6 going to do that.

7 MS. LITTLEPAGE: Yes, sir.

8 Q. Can you explain to me what is an alternative source of
9 clean water that in this context?

10 A. Most certainly. I'm holding up this water bottle would be
11 an example of an alternative source of clean water. In the
12 case of Ecuador, it might be a well which was drilled somewhere
13 outside of a zone which had contamination or at a level which
14 outside of a depth in a zone which did not have contamination.

15 Q. Okay. And did you include in your cost estimate any
16 numbers for providing alternative sources of clean water?

17 A. I don't seem to recall that I did, but I'd have to go back
18 and look at this very carefully.

19 Q. If you turn to the third page, you write that the cost
20 projections above are very rough.

21 Can you explain why you used those words to describe
22 this cost estimate?

23 A. Yes. There are a large number of unknowns. While I
24 attempted to define unit costs very carefully -- and by unit
25 costs I mean, for example, the cost to produce a unit of water

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Russell - cross

1 or something similar -- the quantities were I used the word
2 swag, which I won't expand upon but to say it's a
3 scientifically based wild guess and it's a judgment factor.
4 And with the amount of unknowns and the lack of information
5 that I had with regard to not only levels of contamination but
6 the extent of those levels of contamination, it's a best
7 estimate.

8 THE COURT: Swag is an acronym, right, in common use?

9 THE WITNESS: Yes, sir.

10 THE COURT: And what do the letters SWAG stand for?

11 THE WITNESS: Scientific Wild Ass Guess.

12 THE COURT: Next question, please.

13 Q. You indicate in your report that careful thought must be
14 given to the remediation cleanup.

15 What did you mean by that part of your report?

16 A. Just that. Maybe I don't understand your question.

17 THE COURT: Next question.

18 Q. When you finished creating these cost estimates, did you
19 type them up at that point in Hotel Lago in the fall of 2003?

20 A. Yes.

21 Q. And did you print out the report that is Plaintiff's
22 Exhibit 2414?

23 A. Yes.

24 Q. And did you sign it?

25 A. Yes.

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Russell - cross

1 Q. And did you hand it -- who did you hand it to?

2 A. Mr. Donziger.

3 Q. As I understand it, you were in Ecuador at that time also
4 to prepare to testify at trial. Is that correct?

5 A. That is correct.

6 Q. And was it your understanding that you were a potential
7 witness at the trial?

8 A. Yes.

9 Q. And was it your understanding that you were a potential
10 witness to testify about your observations, your calculations,
11 and your cost estimate?

12 A. I'm not sure of that because I never got to trial. I was
13 selected as a potential witness, but then at the last moment I
14 recall a conversation with -- while I was present between
15 Alberto Wray and Monica Pareja where Alberto came in the room
16 and said, no, he's not going on trial. We were going to ask
17 him --

18 MR. BRODSKY: Objection, your Honor. Hearsay, Alberto
19 Wray told him.

20 MS. LITTLEPAGE: I'll ask the next question.

21 Q. Mr. Russell, had you agreed to be a witness?

22 A. I had agreed to be a witness, yes.

23 Q. And it ended up that you were not a witness?

24 A. That is correct.

25 Q. At the same time when you were there in Ecuador in October

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Russell - cross

1 of 2003, did you meet with a reporter from the Wall Street
2 Journal?

3 A. I don't recall. I may have.

4 Q. If you turn to tab 3, Defendant's Exhibit 1405, did you --
5 let me see if this can refresh your memory.

6 Did you meet with a man called Mark Livsher --
7 although I'm probably butchering his name -- from the Wall
8 Street Journal while you were in Ecuador?

9 A. This document seems to indicate that I did.

10 Q. Do you recall meeting with reporters even if you don't
11 remember Mr. Livsher's name?

12 A. I met with a number of people, and my memory on that point
13 is not specific.

14 Q. And Defendant's Exhibit 1405 has a quote from you, to put
15 this in perspective, you're looking at something size wise
16 larger than the Chernobyl disaster.

17 Was that your opinion in October of 2003?

18 A. That was a considered opinion, yes. And it was developed
19 through conversations with Mr. Donziger where he asked me if
20 I'd ever seen anything about this scale. And the previous year
21 I had been or that year, I believe, I had been over to the
22 Ukraine and had an opportunity to look closely at Chernobyl,
23 not see it physically, but talk to people who had been in the
24 area and had had permission to study it and so on. And the
25 physical scale was approximately, from my understanding at that

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Russell - cross

1 point, about the same, about the same size.

2 Q. And would that statement that was in the Wall Street
3 Journal be a true quote of your opinions at that time?

4 A. I would take issue with one line in that there is a mention
5 of a \$5 billion cleanup estimate, and I believe that the
6 numbers I provided were 6 billion.

7 But the other item I might object to is the phrase
8 that such a project would dwarf any decontamination effort ever
9 undertaken. I don't know of anything larger, but it's possible
10 since that time, for example, Fukushima or some other
11 ecological projects I'm not aware of may have been that scale
12 or larger.

13 Q. And in the Wall Street Journal article it indicates that
14 the only effective way to curtail the pollution would be to dig
15 up, transport, and incinerate millions of tons of contaminated
16 soil.

17 Can you explain what was the process you had in mind
18 when you gave this statement?

19 A. The process is exactly that. There is a thermal -- one of
20 the ways -- let me back up.

21 There are a number of ways of decontaminating
22 petroleum contaminated soil. One of them is bioremediation,
23 which at that point had not been proven in Ecuador. The other
24 is a thermal method where basically you put the soil through a
25 thermal dryer or something, a heat transfer process, heat the

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Russell - cross

1 soil, drive out the volatile components of the petroleum and
2 then return the soil. And in order to do that, you have to dig
3 up the -- you have to dig up the soil.

4 Now, the issue about transport can be very interesting
5 because transport is a very broad word. And in some cases with
6 large incinerators, you need to have a fixed base. In other
7 cases, you can use smaller incinerators of higher capacity
8 which basically could be truck mounted and brought to the site
9 or the locations, I should say.

10 Q. And, Mr. Russell, when you turned over your cost estimate
11 to Mr. Donziger, did you become aware that Mr. Donziger was
12 using this number in press releases and in discussions with the
13 press?

14 A. Yes.

15 Q. Were you aware that your entire report setting out what you
16 had done, as well as some of the limitations of your report,
17 had been uploaded to the Amazon Watch website?

18 MR. BRODSKY: Objection to the characterization of the
19 report, but fine with the question.

20 THE COURT: Overruled.

21 A. At the time, no, I was not.

22 Q. Did you subsequently become aware that they had not only
23 just used your number, but actually uploaded the whole report
24 so anybody could get on and read --

25 A. I believe I did. I believe I did become aware of that.

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Russell - cross

1 Q. Okay. Now, you stopped working on the case in 2005; is
2 that accurate?

3 A. Yes.

4 Q. And at the time you stopped working on the case, you were
5 owed a significant amount of money by the plaintiffs' team;
6 would that be fair?

7 A. Yes.

8 Q. And did you have to file suit against the plaintiffs' team
9 in order to get paid?

10 A. Yes.

11 Q. And were you paid?

12 A. The case was settled and I was paid.

13 Q. Now, after you stopped working for Chevron, you reached out
14 to Chevron -- sorry. I know why you're standing. I said it
15 wrong.

16 After you stopped working for the plaintiffs' team,
17 isn't it true that you reached out to Chevron to discuss some
18 issues about the case?

19 MR. BRODSKY: Objection to form.

20 THE COURT: What's the objection to form?

21 MR. BRODSKY: Vague, issues about the case.

22 THE COURT: Rephrase it.

23 Q. Let's go to tab 4, Defendant's Exhibit 729.

24 Mr. Russell, is this an email from you to a scientist
25 for Chevron?

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Russell - cross

1 A. Yes.

2 Q. Is the name of the scientist from Chevron Sara McMillen?

3 A. It is.

4 Q. Are you aware she's the very next witness in this case?

5 A. I was not aware that she was. I was generally suspicious
6 of the idea that she might be a witness.

7 Q. Have you been able to visit with Ms. McMillen while you
8 were here in New York?

9 A. No.

10 MS. LITTLEPAGE: Judge, we move to admit Defendant's
11 Exhibit 729.

12 THE COURT: Received.

13 (Defendant's Exhibit 729 received in evidence)

14 Q. And in November of 2005, did you write to Ms. McMillen and
15 say -- the subject line is forgot the attachment.

16 Do you see that, sir?

17 A. Yes.

18 Q. Do you know what the attachment was?

19 A. I believe, I believe it may have been a draft, an early
20 draft cost estimate that was never issued.

21 MR. BRODSKY: Your Honor, we have the attachment. We
22 don't have to.

23 THE COURT: Let's just see how it develops.

24 Q. And the earlier draft cost estimate would have been
25 something that you had drafted while you were operating as an

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Russell - cross

1 expert for Mr. Donziger?

2 A. Yes.

3 Q. And why were you sharing your earlier draft work product
4 created in this case for the plaintiffs with the scientist for
5 Chevron?

6 A. It had no relevance at that point because it was inaccurate
7 and had been substantially revised and it was just kind of for
8 information purposes, no real, no real relevance that I can
9 understand.

10 Q. In fact, what you told Ms. McMillen was enjoy, right, is
11 that the first words of your email?

12 A. Yeah.

13 Q. And then you --

14 A. That's something that I do frequently.

15 Q. Then you say the data appear authentic, and I know for a
16 fact that it was soil from the Oriente --

17 A. Oh, wait a minute. Wait a minute. Wait a minute. This
18 may relate to -- this doesn't relate to the cost estimate then.

19 Q. That was my next question. Let's go one step at a time.

20 Does this refresh your memory about what you were
21 sending Chevron's scientist in November of 2005?

22 A. I believe it does. I believe this was the Alexis report.

23 Q. What's been handed to me as the attachment -- I have never
24 seen it before, but it says Ecuador Bioremediation Testing by
25 Alexis Group, September 27, 2005. Is that --

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Russell - cross

1 A. That would be correct, yes.

2 Q. Was there another occasion when you sent Chevron's
3 scientists a draft of your cost estimate?

4 A. I believe that there was.

5 Q. Do you know when you contacted Chevron that time it was
6 before or after November of 2005?

7 A. I do not recall.

8 Q. And I've never seen this, so tell me what the Alexis group
9 is?

10 THE COURT: Why don't we get it marked and make sure
11 we're all playing with the same cards.

12 MR. BRODSKY: Your Honor, for the Court's information,
13 we have it marked it's CVX RICO Bates No. 466855.

14 THE COURT: What's the exhibit number?

15 MR. BRODSKY: On this it's Plaintiff's Exhibit 3367.
16 It was produced to the defense.

17 MS. LITTLEPAGE: Judge, we move to admit Plaintiff's
18 Exhibit 3367.

19 THE COURT: Can I see it?

20 Is there any objection?

21 MR. BRODSKY: No.

22 THE COURT: Plaintiff's 3367 is received.

23 (Plaintiff's Exhibit 3367 received in evidence)

24 Q. Can you tell us -- I don't know that you have a copy. Were
25 you given a copy?

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Russell - cross

1 A. I do not have a copy here but that's all right. Thank you.

2 Q. Can you tell us just briefly what the Alexis group was
3 doing in this study? Tell me the word you would use to
4 describe this document.

5 A. As a consequence of the publicity surrounding the Ecuador
6 lawsuit, a number of groups came out of the woodwork looking to
7 derive a business opportunity and looking to do work in
8 Ecuador. This was one of those groups. They contacted me
9 directly and asked if I could assist them in obtaining soil
10 samples from Ecuador so that they could put them through their
11 process and come up with some sort of estimate or idea as to
12 whether or not their process would work on Ecuadorian soils.

13 Q. And did you provide I think it says two soil samples from
14 Ecuador to this group?

15 A. I did not specifically provide them, but I made
16 arrangements where they could contact someone who would provide
17 them.

18 Q. And it appears that the samples came from the
19 Shushufindi --

20 A. I will accept that. I don't have a specific recollection.

21 Q. And as I understand it, just looking at this report, it
22 appears that this group actually tested the soil for TPH, total
23 petroleum hydrocarbons?

24 THE COURT: Look, this document speaks for itself.
25 The witness has not testified to any foundation that would

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Russell - cross

1 allow him to testify as to what if anything this organization
2 did. So if you have a foundation to lay, lay it. But we're
3 not just going to have speculation based on a document for
4 which he wasn't responsible, as far as the testimony to date
5 indicates.

6 Q. Mr. Russell, did you review this report when you received
7 it from the Alexis group?

8 A. I did.

9 Q. Did you feel like it was important for Chevron to see this
10 data?

11 A. I did.

12 MR. BRODSKY: Objection, relevance.

13 THE COURT: Overruled. It's already answered.

14 Q. Is that why you sent this report to Chevron was so they
15 would be aware of the data the Alexis group had uncovered in
16 the soil samples?

17 MR. BRODSKY: Objection, relevance.

18 THE COURT: Sustained as to form.

19 Q. Did the Alexis group find contamination in the soils
20 indicated in the report?

21 THE COURT: Sustained.

22 Q. Why did you think Chevron needed to see this report?

23 A. Because it provided by this particular -- by this
24 particular time, and we are speaking of late 2005, there was a
25 lot going on in my life that is not associated or involved with

DAHLCHE1

Russell - cross

1 this case, but I had become thoroughly disillusioned with my
2 own cost estimates and had indicated that and was basically no
3 longer working for the original plaintiffs and felt -- I knew
4 from the terms that this was an independent study and my role
5 was basically to just facilitate the information as of
6 scientific interest and I was passing this along to Sara
7 McMillen for informational purposes only.

8 I don't believe that there is any -- and I do not
9 recall -- I do not believe there is any cost information
10 associated with this report. If I remember correctly, it just
11 outlines the fact that bioremediation techniques could be
12 effective. And I knew from my own background that
13 bioremediation techniques, once applied, would be substantially
14 less costly than the incineration methods that I had chosen.
15 But I don't believe that in the transmittal or anything else I
16 discussed cost.

17 Q. And can you describe for us bioremediation and what that
18 would mean and how it's different from the thermal nuclear
19 remediation?

20 MR. BRODSKY: Objection, your Honor.

21 THE COURT: Sorry?

22 MR. BRODSKY: Objection, form.

23 THE COURT: Overruled.

24 A. Bioremediation -- all right. Let me back up. Thermal
25 remediation I've kind of explained. And you're nodding so I

DAHLCHE1

Russell - cross

1 assume you understand that. All right.

2 Bioremediation is a technique where you provide
3 additional nutrients and in some cases enzymes to enable the
4 natural soil bacteria to attack, solubilize, and degrade
5 various compounds in the soil. It's a very cost effective
6 technique that had been proven in the United States during the
7 some of the interim dealing with petroleum compounds,
8 specifically, leaking underground storage tanks and the like.
9 But it had not been proven, until I saw this, it was not a
10 proven technique in Ecuador.

11 Q. And in the interim period, would that be from the fall of
12 2003 when you did your first cost estimate to this date,
13 November of 2005?

14 A. Yes.

15 Q. And did you have an understanding after reviewing the
16 Alexis group report that the microbial cultures had been able
17 to remove the contamination from the soil they were testing?

18 MR. BRODSKY: Same objection before your Honor.

19 THE COURT: I can't hear you, sir.

20 MR. BRODSKY: Same objection, your Honor. She's
21 asking for another way of interpreting the Alexis group report.

22 THE COURT: Sustained.

23 Q. You indicate in your email the data appear authentic. What
24 did you mean by that?

25 A. Just that. They went out of their way to provide, if

DAHLCH1

Russell - cross

1 you'll turn to the report, the back few pages of the report
2 contains analyses by Sparger Technology. And page 10 of 14 and
3 beyond contain some gas chromatograph traces indicating that
4 the soil concentrations of total petroleum, whatever they were
5 using to measure total petroleum hydrocarbons, had decreased.

6 Q. And you indicate you knew for a fact that it was soil from
7 the Oriente, that would be the concession area that was
8 involved in the underlying Ecuadorian action, true?

9 A. The report has to speak for itself. I facilitated and I
10 indicated that I had facilitated obtaining the soil samples for
11 the Alexis group. But can I stand here or sit here and tell
12 you that yes, they absolutely took those soil samples and used
13 this in analysis and all that, no, I cannot.

14 I can only infer from the comments in the report. But
15 I would say that it would have been in their interest to make
16 sure that their technology was applied and that one looking at
17 this report today I would have to say, I would have to assume
18 that the soil samples were actually those tested, soil samples
19 actually tested were those in Ecuador.

20 Q. And did this report provide you with any information as to
21 a potential revision of your cost estimate?

22 A. I believe I've already answered that question, but, yes, it
23 did, because bioremediation techniques have been proven, had
24 been proven at that time to be substantially cheaper than
25 thermal incineration or thermal techniques, yes.

DAH8CHE2

Russell - cross

1 Q. So if bioremediation worked in the concession area, it
2 would be, in your opinion, cheaper to remove the contamination,
3 am I understanding you correctly?

4 A. Yes.

5 Q. Did you send a copy of the Alexis Group report to the
6 plaintiffs' group?

7 A. No, I did not, because the relations at the time with the
8 plaintiffs' group were I would characterize as poor, bordering
9 on hostile.

10 Q. In fact, you were all litigating against each other in a
11 lawsuit?

12 A. I don't remember when the lawsuit was started or when the
13 lawsuit was finished. I would have to check dates on that and
14 right offhand I can't tell you where this issue with the Alexis
15 Group report falls in that entire process.

16 Q. At that point it was a difficult relationship between you
17 and the plaintiffs' group?

18 THE COURT: That's what he said. Could we stop
19 repeating everything?

20 Q. Your next sentence says, "Take a look and drop me a line
21 after you have had a chance to look over the report. What
22 about the issue of letting me see some of the reports?"

23 Can you explain to us what you meant by that sentence?

24 A. Yes. I have never seen until just recently any of the
25 reports which were filed with the court on either side, and

DAH8CHE2

Russell - cross

1 this was more a matter of curiosity because I had been involved
2 with the production of some of the reports which were filed
3 with the Ecuadorian court, but I had never seen either set,
4 either report from either the plaintiffs or the defendants in
5 the process.

6 Q. It goes on at the end and it says, "One final thing. I
7 would be happy to prepare a study to revise the cost estimate
8 down to a more reasonable figure."

9 Did you ever get a response from Chevron to that offer
10 to do a revised cost estimate?

11 A. Never. The issue was dropped.

12 Q. Does Ms. McMillen on the top of this page of Defendants'
13 Exhibit 729 indicate, "Thank you very much, Dave. I will
14 review"?

15 A. Where are we, please?

16 Q. Defendants' Exhibit 729. It's tab 4 in the book.

17 A. Tab 4.

18 Q. Let me ask another question. Other than the e-mail
19 response, did you ever speak to Ms. McMillen about the issue
20 you raised in your e-mail?

21 A. I may have, but I do not recall.

22 Q. Now, in 2006, you sent a cease and desist letter to Mr.
23 Donziger, is that true?

24 A. I believe that's right.

25 Q. If you turn to tab 5 of your book, Plaintiff's Exhibit 763?

DAH8CHE2

Russell - cross

1 A. Yes.

2 Q. Is that a copy of the cease and desist letter you sent to
3 Mr. Donziger?

4 A. I believe it is, yes.

5 Q. Did you ask Mr. Donziger to stop using the cost estimate
6 you had prepared for him in 2003?

7 THE COURT: It says whatever it says. Can we stop
8 doing this? Unless you're asking him whether there was some
9 conversation apart from the letter.

10 MS. LITTLEPAGE: That was my next question, but I
11 probably don't need the first question. I can go straight to
12 the second question.

13 THE COURT: Thank you.

14 Q. Other than the letter to Mr. Donziger, did you have
15 any -- let me ask another question.

16 Did you send a specific cease and desist letter also
17 to Amazon Watch?

18 A. Yes.

19 Q. Did you get a response from both -- first of all, did you
20 get a response from Amazon Watch?

21 A. Yes.

22 Q. Did you get a response from Mr. Donziger?

23 A. Yes.

24 Q. Let's look at, let's start with tab 6, Plaintiff's Exhibit
25 766.

DAH8CHE2

Russell - cross

1 MS. LITTLEPAGE: Judge, these were all, I think,
2 identified in Mr. Russell's witness statement and have been
3 received by the Court from the plaintiffs. Do I need to
4 reoffer them?

5 THE COURT: I am going to rely on the plaintiff to
6 bring to my attention anything as to which you go into the
7 contents that has not already been received.

8 MS. LITTLEPAGE: Yes, sir.

9 Q. Mr. Russell, Plaintiff's Exhibit 766, who is Leila
10 Salazar-Lopez and did you know that person personally?

11 A. I believe I met Ms. Lopez or Mrs. Lopez, I'm not sure, in
12 Ecuador in 2003 at the time I was down there in 2003. I do not
13 recall meeting her after that, and I would not be able to
14 identify her if she was in the courtroom. But it was my
15 understanding at that time and I believe that she was the
16 manager or director for Amazon Watch.

17 Q. Your letter to Mr. Donziger was dated February 14, 2006,
18 and the e-mail from Amazon Watch is dated February 16, 2006.
19 In those two date time frames, did you receive any other
20 communication from Amazon Watch or was this the first time you
21 heard from Amazon Watch?

22 A. I believe it was the first time I heard from Amazon Watch,
23 but I am not specific on that.

24 Q. Did Amazon Watch tell you that they respected your request
25 and would remove your report from --

DAH8CHE2

Russell - cross

1 THE COURT: Please stop reading the e-mails.

2 Look, this is going to be a trial of indeterminable
3 length if what we do is take 4,000 documents and ask the
4 witnesses to read them back to us or to read them to the
5 witness and say don't they say that. I have tried to make it
6 clear to both sides before we began the trial that we are just
7 not going to do that, and I insist upon it.

8 MS. LITTLEPAGE: Yes, sir.

9 Q. Let me ask a better question. This e-mail indicates that
10 Amazon Watch is going to remove your report from their Web
11 site. At this point in time, were you aware that Amazon Watch
12 had actually put your entire report on their Web site?

13 A. I believe I was.

14 Q. Did you send any further communication to Amazon Watch in
15 February of 2006?

16 A. I don't recall. I'm sure you have documents indicating if
17 I have.

18 Q. If you turn to tab 7.

19 MR. BRODSKY: This is one where we have an objection.
20 Tab 7 is a defense exhibit. It's not one that's been received
21 in evidence. The bottom portion appears on Plaintiff's Exhibit
22 766. The top portion, which is inadmissible because it's
23 hearsay, Mr. Russell does not appear on that top portion.

24 THE COURT: Let's see what use is about to be made.

25 Q. Mr. Russell, do you see Defendants' Exhibit 738?

DAH8CHE2

Russell - cross

1 A. Yes.

2 Q. It appears to be two separate e-mails. I want to focus
3 your attention on the bottom e-mail. Is that an e-mail from
4 you to Ms. Salazar of Amazon Watch?

5 A. Yes.

6 Q. Did you send an e-mail along with an official letter to
7 Amazon Watch?

8 A. I believe I did, but I do not recall specifically.

9 Q. Are you aware that Mr. Donziger forwarded your cease and
10 desist letter to the whole plaintiffs' group in Quito, Ecuador?

11 A. No, I was not.

12 Q. In the time that you have met with Chevron, have they shown
13 you the documents of the steps Mr. Donziger took to follow your
14 request in your cease and desist letter?

15 MR. BRODSKY: Objection to form. It assumes facts not
16 in evidence.

17 THE COURT: Sustained as to form.

18 Q. Have you seen any documents relating to Mr. Donziger's
19 reaction to your cease and desist letter?

20 A. I believe I have.

21 Q. If you turn to tab 8, Defendants' Exhibit 741A, is this one
22 of the documents that you have reviewed on that issue?

23 MR. BRODSKY: We object also to this document.

24 THE COURT: It has not been offered.

25 MR. BRODSKY: Yes, your Honor.

DAH8CHE2

Russell - cross

1 A. I don't know that I have seen this document.

2 THE COURT: Next question.

3 A. No, I have not seen that document.

4 Q. If you turn to -- let me ask you another question.

5 In all the documents you have reviewed, have you
6 reviewed any documents about Mr. Donziger in February of 2006
7 getting another cost estimate from his technical team in
8 Ecuador?

9 A. I believe that there was an allegation by Mr. Donziger in
10 his response to my cease and desist, which he had indicated,
11 yes, we will stop using your cost estimate because we have
12 another independent cost estimate.

13 Q. Have you had an opportunity in the time you have met with
14 Chevron to review that alternative cost estimate that Mr.
15 Donziger had gotten?

16 MR. MASTRO: Objection to the form. It assumes facts
17 not in evidence.

18 THE COURT: Sustained.

19 Q. Have you received any documents about an alternative cost
20 estimate that Mr. Donziger may or may not have gotten?

21 A. To the best of my knowledge and recollection, no additional
22 cost document exists nor was any other cost estimate ever
23 provided to me.

24 Q. When you say such a document doesn't exist --

25 THE COURT: He said to the best of his knowledge and

DAH8CHE2

Russell - cross

1 recollection. Let's move on.

2 Q. Do you know who Fausto Penafiel is?

3 A. I believe that I do, but I'm not certain.

4 Q. Did you go to check the Amazon Watch Web site to verify
5 that your report had been removed from Amazon Watch?

6 A. I probably did, but I have no specific recollection of
7 that.

8 Q. Do you recall ever seeing any documents about a 10 to 12
9 billion dollar cost estimate created in April of 2006?

10 A. I believe I have answered that question.

11 Q. I'm sorry. I asked you about February of 2006. I am now
12 in April. Did you ever see any documents about a cost estimate
13 in April of 2006?

14 A. My answer, my previous answer was including up to the
15 present. So no.

16 Q. If you turn to tab 16, Plaintiff's Exhibit 788, is that an
17 e-mail between Mr. Donziger and yourself?

18 That was a bad question. Is Plaintiff's Exhibit 788
19 two e-mails, one from you to Mr. Donziger and then his
20 response?

21 A. Yes.

22 Q. In August of 2006, did you write Mr. Donziger and ask
23 that --

24 THE COURT: Is this in evidence?

25 MR. BRODSKY: Yes.

DAH8CHE2

Russell - cross

1 THE COURT: All right. Move on.

2 Q. In August of 2006, did Mr. Donziger respond to you when you
3 raised an issue about your cost estimate?

4 THE COURT: Move on. Unless you're asking about
5 something other than the response that is in evidence that's
6 right in front of all of us that we don't have to take time
7 having the witness effectively read to you.

8 Q. In August of 2006, when Mr. Donziger responded to your
9 second e-mail, did you check to see if the Frente had removed
10 your cost estimate?

11 A. I do not know at this point and did not know then that the
12 Frente had a Web site and have no way of knowing. Because I do
13 not speak Spanish, I would not have visited the Frente Web
14 site. So the answer is no, I have not checked.

15 Q. Did you visit in August of 2006 the Chevron Toxico Web
16 site?

17 A. I may have. It seems that I have according to my e-mail on
18 August 15.

19 Q. If you turn to tab 17, Defendants' Exhibit 733, is this an
20 e-mail, Mr. Russell, from you -- it's a series of e-mails
21 between you and Chevron's scientist in August of 2006?

22 A. It appears to be that.

23 MS. LITTLEPAGE: We move to admit Defendants' Exhibit
24 733.

25 MR. BRODSKY: No objection.

DAH8CHE2

Russell - cross

1 THE COURT: Received.

2 (Defendants' Exhibit 733 received in evidence)

3 Q. If you start on page 2, August 15, 2006, did you send to
4 Chevron in August of 2006 your e-mail exchange with Mr.
5 Donziger about your concerns of the use of your cost estimate?

6 THE COURT: You mean apart from what is in this
7 document?

8 MS. LITTLEPAGE: Yes. Did he send the actual cease
9 and desist letter?

10 THE COURT: Which question are you asking?

11 MS. LITTLEPAGE: That was a bad question. Let me ask
12 a better question.

13 Q. In February of 2006, when you sent the first cease and
14 desist letter, did you forward that to Chevron?

15 A. I may have. I do not recall.

16 Q. In August of 2006, did you forward your second e-mail
17 correspondence with Mr. Donziger to Chevron?

18 A. I do not recall.

19 Q. Does this document refresh your memory that you forwarded
20 your e-mail exchange to Mr. Donziger to Chevron on August 15th
21 of 2006?

22 A. It could have been, yes. I did not necessarily want to
23 introduce this subject at this particular point, but at that
24 particular time, my wife had contracted a very serious case of
25 cancer, which ultimately caused her to pass on in April, and so

DAH8CHE2

Russell - cross

1 I had many, many distractions and I can't -- my memory on this
2 is not there.

3 Q. I appreciate that, sir.

4 If you go to the e-mail in the middle of the page from
5 you to Ms. McMillen, you asked her for some information about
6 the case?

7 A. Are we on page 2?

8 Q. Yes, sir. In the middle of the page. Do you see where you
9 asked Chevron to provide you some information about the case
10 and the timing of the case?

11 A. Exhibit 733?

12 Q. Yes, sir. Page 2.

13 A. Page 2.

14 Q. In the middle of the page, "Where are they in the case?
15 How soon will it go to the judge?"

16 A. OK.

17 THE COURT: Now, is there a question?

18 MS. LITTLEPAGE: Yes, sir.

19 Q. Did Chevron provide you any information about the case?

20 A. No.

21 Q. Then on the first page to Ms. McMillen, you indicate that
22 you had seen data indicating some ground contamination. Do you
23 see that, sir?

24 A. Yes.

25 Q. Was the data you had seen involving ground contamination

DAH8CHE2

Russell - cross

1 data you saw when you were working for the plaintiffs' group or
2 was it data you saw after you stopped working for the
3 plaintiffs' group?

4 A. When I stopped working for the plaintiffs' group I had no
5 access to data, aside from the Alexis report, and as I recall,
6 there was somebody else out of Florida who contacted me, but I
7 don't recall what happened with that. The Alexis Group was the
8 only other significant contact where I might have seen any
9 data, aside from the reports which were filed, and not even the
10 reports, the analyses which were from -- I think I had seen
11 analyses from four sites.

12 Q. You indicate in your witness statement on page 7, at tab 1,
13 page 7, line 21 to 22.

14 A. Yes, ma'am. OK.

15 Q. You indicate in your witness statement that you would be
16 satisfied if Mr. Donziger did not cite you as a source for a
17 damage estimate. Is that what you wanted out of your cease and
18 desist letter, is not to be cited as a source for the damage
19 estimate?

20 A. Yes, one of the things at least.

21 Q. If you go to tab 26, Defendants' Exhibit 732. Mr. Russell,
22 are you with me?

23 A. Yes, I am.

24 Q. Is this an e-mail from you to Ms. McMillen?

25 A. It is.

DAH8CHE2

Russell - cross

1 MS. LITTLEPAGE: We move to admit Defendants' Exhibit
2 732.

3 MR. BRODSKY: Objection to relevance, your Honor.

4 THE COURT: And the relevance is, Ms. Littlepage?

5 MS. LITTLEPAGE: Judge, as I understand reading the
6 amended complaint, the allegation is that Mr. Russell's cost
7 estimate was exaggerated, and I believe that I am entitled to
8 show that --

9 THE COURT: That's part of it.

10 MS. LITTLEPAGE: That's A, and then there is a B.

11 From reading the complaint, it appears that there are
12 at least some inferences that the cost estimate was exaggerated
13 because Mr. Russell no longer believed that there was
14 contamination as opposed to that he believed there was just a
15 cheaper remediation method.

16 So the cost estimate -- well, Judge, a cost estimate
17 can be exaggerated and therefore fraudulent because it's wrong
18 or because it's just too high. And I believe Mr. Russell, and
19 I would like to be able to show Mr. Russell's belief about his
20 cost estimate that it was too high because there were cheaper
21 ways to remove the contamination, not that he ever felt that
22 there was not contamination in the concession area. And
23 without being allowed to show that whole picture, I think there
24 is an inference allowed that's not true and is not appropriate.

25 THE COURT: I will take it for what it is worth.

DAH8CHE2

Russell - cross

1 Proceed.

2 (Defendants' Exhibit 732 received in evidence)

3 Q. Are you with me, Mr. Russell, on Defendants' Exhibit 732?

4 A. I am.

5 Q. In June of 2007, did you write again to Chevron's scientist
6 Sara McMillen?

7 A. Yes.

8 Q. And you state, "I know that this fits into the general
9 category of CYA." What did you mean when you wrote that to
10 Chevron's scientist?

11 A. CYA is a term of art that generally stands for cover your
12 ass.

13 THE COURT: Which is a high art form in our society.

14 THE WITNESS: Thank you, sir.

15 Q. What happened that motivated you to write this letter to
16 Ms. McMillen?

17 A. The time frame, I indicated that my wife had passed on in
18 early 2007, I believe it was mid-April. Later that year I was
19 working in Poland at the Central Mining Institute, and one of
20 the things that the Central Mining Institute was doing, I was
21 working with the radiometric laboratory of the Central Mining
22 Institute on removal of radium from ground water. The source
23 of the radium was naturally occurring and it was in hydrocarbon
24 deposits of all types, including petroleum. And this was just
25 an acquaintance speaking to another acquaintance on a technical

DAH8CHE2

Russell - cross

1 matter saying, Hey, you may want to take this up in case it's
2 ever thought about or whatever. You may want to investigate
3 this. It could be nothing. It could be something. At that
4 point I was either leaving for Poland or possibly -- I believe
5 at that point I was in Poland and this was just a random
6 thought that had occurred.

7 Q. Did Chevron ever respond and give you any information as to
8 whether they were testing for radium in the spent messes from
9 Ecuador?

10 A. No.

11 THE COURT: Ms. Littlepage, how much longer do you
12 expect to be?

13 MS. LITTLEPAGE: 15 minutes.

14 THE COURT: We will take a break here.

15 (Recess)

16 THE COURT: All right. Ms. Littlepage.

17 MS. LITTLEPAGE: Yes, sir. May I proceed?

18 THE COURT: Yes.

19 BY MS. LITTLEPAGE:

20 Q. Mr. Russell, can you turn in your white book to tab 27,
21 Defendants' Exhibit 735.

22 A. Yes.

23 Q. Is that an e-mail from you to Chevron's scientist, Ms.
24 McMillen -- I'm sorry. I'm lost.

25 MS. LITTLEPAGE: I think I have done that one already.

DAH8CHE2

Russell - cross

1 THE COURT: I think it's in the book twice.

2 MS. LITTLEPAGE: It is. I will move on.

3 Q. Do you recall in 2009 you wrote Chevron again talking about
4 chromium VI?

5 A. I may have. I don't recall.

6 Q. Do you recall ever writing to Chevron about chromium VI and
7 whether chromium VI was in the soil in the concession area?

8 A. I may have. I do not recall.

9 Q. Can you tell us what is chromium VI?

10 MR. BRODSKY: Objection, your Honor. Relevance.

11 THE COURT: Just a moment.

12 THE WITNESS: May I answer, sir?

13 THE COURT: Just a minute.

14 What is the relevance, Ms. Littlepage?

15 MS. LITTLEPAGE: I will move on because I am missing
16 the exhibit.

17 THE COURT: I was getting nervous that we were going
18 to move through the periodic table of the elements.

19 Q. Did you have any contact with Chevron between 2007 and
20 2009, if you recall?

21 THE COURT: Folks, I am going to have to take a short
22 recess. I have to confer with another judge on something else.
23 I will be back.

24 (Recess)

25 THE COURT: Sorry about the interruption, but it was

DAH8CHE2

Russell - cross

1 necessary. Let's continue.

2 You want to address chromium VI?

3 MR. MASTRO: I just wanted to let the Court know that
4 the parties agreed that Mr. Veiga, having finished his
5 testimony, could attend parts of the rest of the trial. He
6 will leave if there is anything about the Borja matter.

7 THE COURT: OK.

8 MR. FRIEDMAN: Basically, the agreement is we can call
9 him back, like you said, even though he is sitting in the
10 courtroom for part of this.

11 THE COURT: Yes. In the circumstances.

12 MR. MASTRO: If that were to be the case.

13 THE COURT: Let's move on. Thank you.

14 BY MS. LITTLEPAGE:

15 Q. Mr. Russell, I have placed before you, and I put one for
16 the Court, your Honor, on the ledge in front of you. I found
17 the right document during the break of Defendants' Exhibit 735.

18 Is this an e-mail from you to Chevron's scientist Sara
19 McMillen in May of 2009?

20 A. Yes.

21 MS. LITTLEPAGE: We move to admit Defendants' Exhibit
22 735.

23 MR. BRODSKY: No objection.

24 THE COURT: Received.

25 (Defendants' Exhibit 735 received in evidence)

DAH8CHE2

Russell - cross

1 Q. This e-mail talks to Chevron about chromium VI?

2 A. That's correct, hexavalent chromium.

3 Q. What is whatever the word you just said chromium?

4 THE COURT: Hexavalent.

5 Q. What is that?

6 A. That is a form of chromium metal, which is highly ironized.
7 It's a state of matter.

8 THE COURT: It's applied with up to six electrons, is
9 that right?

10 THE WITNESS: Yes, sir.

11 Q. You indicated that you had notes that showed chromium VI
12 left in the ground. Do those notes relate to the time when you
13 were in Ecuador in the 2003 to 2005 time frame?

14 A. The only notes that I would have had would have been those
15 which were from one of two sources, either the original Texaco
16 cleanup documents, that would have been the Woodward-Clyde
17 report, and it's massive, and I think it was finished in about
18 '95 or so, or some of the analyses from the laboratory, and
19 there may have been one other source, and I will get to that in
20 a moment.

21 The analysis from the laboratory, and I don't recall
22 whether they had -- those would have been in the public reports
23 that were filed with the court. And then the third point would
24 be my long experience and background knowing, for example, that
25 at one point back in the 70s, and substantially later, maybe

DAH8CHE2

Russell - cross

1 even into the 80s, hexavalent chromium is used in solutions
2 like chromic acid as not only a passivator to preserve the
3 metal that would be in the drill pipes, but, also, it is used
4 as a biocide to prevent bacterial growth down hole in the
5 wells.

6 Q. Do you recall, sir, which notes you were referring to in
7 this e-mail?

8 A. It would have been one of those three sources, and I cannot
9 tell you. I know at one point I was researching things for the
10 original plaintiffs' team to determine what might have been
11 used down in the wells, and it's quite possible I came across
12 some indication that hexavalent chromium was used at that time
13 many, many years ago.

14 Q. What is the significance of chromium VI being left in the
15 ground?

16 A. Well, chromium VI --

17 MR. BRODSKY: Objection. It assumes facts not in
18 evidence. Relevance.

19 THE COURT: Sustained.

20 Q. Mr. Russell, does your e-mail indicate that your notes
21 showed there was significant amounts of chromium VI left in the
22 ground?

23 THE COURT: Sustained. It's useful when you're
24 intending to object not just to stand up but to say something,
25 counsel.

DAH8CHE2

Russell - cross

1 MR. BRODSKY: Yes, your Honor.

2 Q. Mr. Russell, did you have an understanding whether there
3 was chromium VI left in the ground in Ecuador?

4 A. The only way I could have shown that there was chromium VI
5 would be by the direct analysis from the laboratory and those
6 would have been contained, if it was found, that would have
7 been contained in the reports which were filed for the judicial
8 inspections.

9 THE COURT: So as you're sitting here today, you are
10 speculating, right, about chromium VI?

11 THE WITNESS: That is correct, your Honor.

12 THE COURT: Move on, please.

13 Q. I want to turn to a part of your direct testimony witness
14 statement where it talks about your experience with sampling
15 done in Ecuador. Can you explain what role you played in the
16 sampling process in Ecuador before you stopped working with the
17 plaintiffs' group?

18 A. I basically set up, managed, organized, supervised and ran
19 administratively and trained the teams. I also negotiated the
20 protocols with Chevron, and these are the testing protocols
21 that we were going to use for the sampling.

22 Q. Your witness statement indicates that part of your role as
23 the chief environmental scientist was to also control a bank
24 account that payments were made from for costs, is that true?

25 A. That is correct. The bank account was the Global

DAH8CHE2

Russell - cross

1 Environmental Operations, Inc. (GEO) Ecuador account.

2 Q. Was it a bank account set up in Ecuador?

3 A. No.

4 Q. Was it an American bank account?

5 A. I'm sorry?

6 Q. Was it an American bank account?

7 A. Yes, it was.

8 Q. Did you pay some of the costs associated with the sampling
9 from the GEO Ecuador account?

10 A. Absolutely. The costs -- the GEO account, because we were
11 moving a lot of money through and down to Ecuador to pay for
12 all of the charges and associated fees and laboratory and
13 whatever for the operations in Ecuador, the account was funded
14 by Kohn Swift, and the account was established as a separate
15 account to keep it away from my company accounts for tax
16 purposes. So it was an entirely separate account and that's
17 the way we maintained it.

18 THE COURT: Mr. Russell, it would really help if you
19 would confine your answers to the questions you're asked.

20 THE WITNESS: Yes, sir.

21 THE COURT: I think your answer fully answered the
22 question as soon as you finished with the word "absolutely."

23 THE WITNESS: Thank you.

24 Q. Sir, did you control payments out of the GEO Ecuador
25 account?

DAH8CHE2

Russell - cross

1 THE COURT: That's what he said a minute ago.

2 Q. Were you the only person who controlled payments out of the
3 GEO Ecuador account?

4 A. I was instructed by Mr. Donziger to make certain specific
5 payments which we complied with.

6 Q. And the types of things you were paying for in Ecuador was
7 what, what sort of expenses were you paying for?

8 A. Public relations, technical support for the testing team,
9 salaries, hotel bills, technical supplies, just about
10 everything.

11 Q. Did you also pay for the laboratories to do the sample
12 testing?

13 A. As I recall, there were some payments made.

14 Q. You indicate on page 11, line 4 of tab 1, which is your
15 written statement -- actually, I will ask another question.

16 If you turn to tab 28, Plaintiff's Exhibit 721.

17 A. Yes.

18 Q. Is that an e-mail between you and Mr. Donziger?

19 A. Yes, it appears to be.

20 Q. First of all, let's start with, who is Mr. Calmbacher,
21 although he may be Dr. Calmbacher?

22 A. It is Dr. Calmbacher, and he was an employee of Global
23 Environmental Operations during the period of approximately
24 mid-2004 through about mid-2005.

25 Q. Had he been an employee of GEO before mid-2004?

DAH8CHE2

Russell - cross

1 A. No.

2 Q. Was he brought on to the GEO team solely to work on the
3 Ecuador project?

4 A. Yes, because he also spoke Spanish.

5 Q. Did Mr. Calmbacher get ill when he was in Ecuador?

6 A. He did.

7 Q. Because of his illness, was he delayed in preparing some of
8 his reports?

9 A. Yes, he was.

10 Q. Was that a concern of yours that there was this delay in
11 getting the signed reports?

12 A. Yes, because there was a threat by Mr. Donziger that unless
13 Dr. Calmbacher, while he was sick, was able to complete the
14 reports and file them with the court in Ecuador, that he would
15 not be paid for the work.

16 Q. Was Mr. Donziger facing deadlines in the Ecuadorian court
17 to file reports, as you understand it?

18 MR. BRODSKY: Objection.

19 THE COURT: Sustained.

20 Q. Did you have an understanding why it was important in terms
21 of timing for Mr. Calmbacher to get his reports signed?

22 THE COURT: Sustained. The word understanding is not
23 an exception to the hearsay rule.

24 Q. Did you have any direct contact with Mr. Calmbacher about
25 the timing of his expert reports?

DAH8CHE2

Russell - cross

1 A. Yes.

2 Q. Did you have an understanding as to the deadlines
3 associated with --

4 THE COURT: Sustained. Third time. Three strikes,
5 you're out. Drop that subject. Move on.

6 But only in this whole area. This business of trying
7 to shoehorn in through the witness, who has no personal
8 knowledge of the subject, stuff you would like to get in by
9 asking him whether it is his understanding. It's my
10 understanding George Washington threw a dollar across the
11 Delaware, but it doesn't prove it. It's not even admissible.

12 Q. Mr. Russell, do you have personal understanding of the
13 deadlines, personal knowledge --

14 THE COURT: That's it. Move on or the cross is over.

15 Presumably you are going to call Mr. Donziger, and to
16 the extent he has personal knowledge of anything, or his state
17 of mind is an issue, he will tell us all about it.

18 Q. Mr. Russell, if you turn to tab 1, which is your witness
19 statement.

20 A. Yes.

21 Q. Page 6, line 3.

22 THE COURT: We are talking about Plaintiff's Exhibit
23 3200, right?

24 MS. LITTLEPAGE: Yes, sir.

25 A. Yes.

DAH8CHE2

Russell - cross

1 MS. LITTLEPAGE: It should be tab 1 in the book if you
2 need to look at it.

3 Q. Are you with me on page 6, line 3?

4 A. I am.

5 Q. It indicates in your direct testimony that you sent the
6 cease and desist letter to Mr. Donziger because you felt that
7 your association with the case was hurting your professional
8 reputation?

9 A. That's correct.

10 Q. If you turn to tab 15, Plaintiff's Exhibit 1410.

11 A. I'm there.

12 Q. Is that information that is contained on your Web site, the
13 Global Environmental Operations, Inc. Web site?

14 A. That is. It is a reprint of an article which was written
15 in 2004 by, I believe, Tom Gibson of a magazine called
16 Progressive Engineering.

17 Q. Does your Web site even as of today have a copy of that
18 article that was written in the Progressive Engineering
19 magazine?

20 A. Yes, because I haven't touched my Web site in about four or
21 five years.

22 Q. If you turn to page 5 of Defendants' Exhibit 1410.

23 MS. LITTLEPAGE: We move to admit Defendants' Exhibit
24 1410.

25 THE COURT: Received.

DAH8CHE2

Russell - cross

1 (Defendants' Exhibit 1410 received in evidence)

2 Q. Are you on the last page, Mr. Russell?

3 A. Page 5 of 5?

4 Q. Yes, sir.

5 A. Yes.

6 Q. I want to direct your attention to the paragraph that
7 starts, "A recent job has taken Russell to Ecuador on a project
8 that typifies his overseas work." Do you see that paragraph?

9 A. I do.

10 (Continued on next page)

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DAHLCH3

Russell - cross

1 BY MS. LITTLEPAGE:

2 Q. And does this article that's on your website discuss your
3 involvement in the Texaco case?

4 A. It does. Again, I would point out that this article was
5 written I believe in 2004, so it is not recent, and it was
6 an -- this was the entire article.

7 Q. And does the article that appears on your website have
8 information about your opinions related to some of the issues
9 in the Ecuador case?

10 THE COURT: It speaks for itself, doesn't it?

11 THE WITNESS: If you're referring to this article?

12 THE COURT: Excuse me, Mr. Russell.

13 Counsel, it speaks for itself, doesn't it?

14 MS. LITTLEPAGE: Yes, sir.

15 THE COURT: Move on.

16 Q. And I note, sir, that you wrote a book that was published
17 in 2011; is that correct?

18 A. Yes.

19 Q. And in that book, do you discuss your involvement in the
20 case in Ecuador?

21 A. I may have. I don't recall right offhand.

22 MS. LITTLEPAGE: Those are my questions. Thank you.

23 THE COURT: Thank you very much.

24 Mr. Gomez.

25 MR. GOMEZ: Yes.

DAHLCH3

Russell - cross

1 CROSS-EXAMINATION

2 BY MR. GOMEZ:

3 Q. Good morning, Mr. Russell.

4 A. Good morning.

5 Q. Mr. Russell, did you send your cease and desist letter to
6 any of the Ecuadorian plaintiffs directly?

7 A. I don't recall that I did. I believe I relied on
8 Mr. Donziger to take care of that because he was running the
9 Ecuadorian plaintiffs' operations.

10 Q. Did you direct Mr. Donziger to transmit a copy of the
11 letter to the plaintiffs specifically?

12 A. No, I don't believe I did.

13 Q. Did you send your cease and desist letter to any of the
14 Ecuadorian plaintiffs' attorneys in Ecuador?

15 A. No.

16 Q. Do you know if any Ecuadorian plaintiff was in agreement
17 that Mr. Donziger use your cost estimate over your objection?

18 MR. BRODSKY: Objection.

19 THE COURT: Sustained at least as to form.

20 Q. Do you know if any Ecuadorian plaintiff agreed that
21 Mr. Donziger should use your cost estimate over your objection?

22 MR. BRODSKY: Same objection.

23 THE COURT: Same ruling.

24 Did you ever speak to any of the Ecuadorian
25 plaintiffs, Mr. Russell?

DAHLCHE3

Russell - cross

1 THE WITNESS: No, sir, I don't believe I have.

2 THE COURT: Ever meet any of them?

3 THE WITNESS: Not after 2004.

4 THE COURT: Ever exchange emails with any of them?

5 THE WITNESS: Never.

6 THE COURT: Ever correspond with any of them?

7 THE WITNESS: No, sir.

8 THE COURT: Ever communicate with any of them in any
9 way?

10 THE WITNESS: Not that I recall.

11 THE COURT: I think we covered it, Mr. Gomez.

12 MR. GOMEZ: Yes. Thank you.

13 Q. Mr. Russell, after you stopped working for the plaintiffs'
14 group, did you ever offer to develop a cost estimate for
15 Chevron regarding the Ecuadorian situation?

16 A. Yes.

17 Q. Who did you propose that to?

18 THE COURT: Haven't we covered that all on
19 Ms. Littlepage's examination, Mr. Gomez?

20 MR. GOMEZ: I'll move on, your Honor.

21 Q. Mr. Russell, were you paid for the time you spent reviewing
22 your written declaration in this case?

23 A. No.

24 Q. Were you paid for the time you spent preparing to testify
25 in this case?

DAHLCH3

Russell - cross

1 A. No.

2 Q. And are you being paid by Chevron for the time testifying
3 here yesterday and today?

4 A. No.

5 MR. GOMEZ: No further questions, your Honor.

6 THE COURT: Thank you.

7 Redirect.

8 MR. BRODSKY: Yes, your Honor.

9 REDIRECT EXAMINATION

10 BY MR. BRODSKY:

11 Q. Mr. Russell, would you mind turning to in your binder,
12 tab 2, your cost estimate, Plaintiff's Exhibit 2414.

13 A. Yes, sir.

14 Q. Do you recall being asked questions by the defense
15 regarding the definitions of open drill pits, open production
16 waste oil pits, and the other items there on the first page?

17 A. I do.

18 Q. And giving your answers; do you remember that?

19 A. Yes.

20 Q. Do you remember being asked questions and giving answers
21 regarding the appearance of this on a website, Plaintiff's
22 Exhibit 2414?

23 A. Yes.

24 Q. Did it say anywhere in your cost estimate how many pits of
25 the approximately 45 on the first page you drove by in a van

DAHLCH3

Russell - redirect

1 going 40 to 50 miles per hour?

2 A. No.

3 Q. Did it say anywhere in your cost estimate that --

4 THE COURT: Mr. Brodsky, same rules apply to you.

5 MR. BRODSKY: Understood, your Honor.

6 THE COURT: It says what it says. It's got getting
7 bigger or less.

8 MR. BRODSKY: Understood.

9 Q. In the first paragraph of your cost estimate, do you see
10 where it says, and for many reasons Texaco choose not to look
11 at groundwater in its remediation effort.

12 Did you determine that yourself or did someone tell
13 you to assume that?

14 A. Best of my recollection, I was told that.

15 Q. And who told you that?

16 A. Someone from the plaintiffs' party. I do not recall. It
17 may have been Mr. Donziger, it may have been someone else.

18 Q. Let me show you an exhibit.

19 MR. BRODSKY: May I approach, your Honor?

20 THE COURT: Yes, you may.

21 Q. I'm showing you Plaintiff's Exhibit 3201 for
22 identification. Would you mind, Mr. Russell, taking a moment
23 to look at it, please.

24 For the record, it's a multipage exhibit. On the
25 first page it says at the top from Dave Russell, December 12,

DAHLCHE3

Russell - redirect

1 2004, to CBonifaz. And the Bates number, for the record, is
2 DONZHDD53542 through 548.

3 A. Okay.

4 Q. Do you recognize it, Mr. Russell?

5 A. Yes, I do.

6 Q. Is that an email exchange you had with Mr. Bonifaz on pages
7 1 and 2 and starting on the second page of the exhibit with
8 Steven Donziger and others?

9 A. Yes.

10 Q. Does it relate to your cost estimate, in part?

11 A. It does.

12 MR. BRODSKY: Your Honor, we offer it.

13 MS. LITTLEPAGE: No objection.

14 THE COURT: It's received.

15 (Plaintiff's Exhibit 3201 received in evidence)

16 Q. Mr. Russell, turning to the last page of the exhibit, do
17 you recall being asked questions by the defense with respect to
18 Exhibit 733, which is in tab 17 of the defense binder?

19 A. Okay.

20 Q. Do you see where it was highlighted for you?

21 A. Yes.

22 Q. Let me direct your attention on the last page. Do you see
23 where it says we don't know the extent -- directing you to that
24 line from we don't have sufficient data through the end of your
25 email. Could you read that silently to yourself, please.

DAHLCH3

Russell - redirect

1 THE COURT: I'm confused. Which document are you
2 referring to?

3 MR. BRODSKY: I apologize, your Honor. For the
4 record, it's 3201, the last page, it's Bates numbered 53547.

5 THE WITNESS: Excuse me, counsel, I believe it's page
6 No. 6.

7 Q. Page 6. Thank you. And it's up on your screen if you
8 could scroll down on the screen. Thank you.

9 MR. BRODSKY: Could you highlight from we don't have
10 sufficient data through the end, all the way down to the
11 bottom. Thank you.

12 Q. Mr. Russell, in addition to this email stating we don't
13 know the extent of the soil contamination or the magnitude or
14 the extent of the groundwater contamination, we cannot provide
15 anyone with a realistic cost estimate.

16 Did you speak to Mr. Donziger regarding the not
17 knowing the extent of the soil contamination or the magnitude
18 or extent of groundwater contamination in 2004?

19 A. Yes.

20 Q. What if anything did you tell him about whether you could
21 provide him with a realistic cost estimate in 2004?

22 A. I believe, to the best of my recollection, that I indicated
23 that we could not provide any sort of accuracy for a cost
24 estimate other than the swag that I had provided in 2003.

25 But the fact was that we were starting to gather data

DAHLCH3

Russell - redirect

1 to indicate that the costs appeared to be substantially lower
2 because we weren't finding analytical results consistent with
3 high levels of contamination which may have been in need of
4 remediation.

5 Q. Mr. Russell, did you tell that to Mr. Donziger on one
6 occasion or more than one occasion in 2004?

7 A. In more than one occasion.

8 Q. And directing your attention to that same Exhibit 3201,
9 page 4, down at the bottom of your email you say the
10 differences between an estimate and a guesstimate, right now we
11 are still at the guessing stage.

12 Do you see that?

13 A. Yes.

14 Q. Did you, in addition to writing to Mr. Donziger and telling
15 him that, tell that to him in person?

16 A. Yes.

17 Q. On one occasion or more than one occasion?

18 A. More than one occasion.

19 Q. Directing your attention to page 2 of that same exhibit,
20 3201, at the beginning, you ended it with the estimate
21 guesstimate at the beginning.

22 Did you tell Mr. Donziger -- well, in addition to
23 telling Mr. Donziger a cost estimate is not a trivial matter,
24 do you see that in the top part of your email?

25 THE COURT: This is in the email dated December 12,

DAHLCH3

Russell - redirect

1 2004, 7:32 a.m. Am I right, counsel?

2 MR. BRODSKY: Yes.

3 Q. Did you tell that to Mr. Donziger in person as well?

4 A. Yes.

5 Q. And turning to the first page of that email chain, do you
6 see the email on the first page, Plaintiff's Exhibit 3201,
7 5:34 p.m., 12/12/2004, CBonifaz wrote.

8 Do you see that?

9 A. Yes.

10 Q. Now, in this particular document, Mr. Russell, can you tell
11 who else, who else received this email from Mr. Bonifaz? From
12 that first page.

13 A. From the first page I do not know who received -- this is
14 the material on page 1 of 7; is that correct?

15 Q. That's correct, if we can go to the first page.

16 A. It says, where it starts 5:34 p.m.?

17 Q. Right. Other than yourself, Mr. Russell, do you know
18 anybody else who received this email, whether or not somebody
19 else received it?

20 A. I do not know directly. However.

21 Q. I'm not going to ask you to speculate, Mr. Russell.

22 A. Okay.

23 Q. If you look at the first page, No. 2, do you see that?
24 Would you please read that silently to yourself under
25 5:34 p.m., CBonifaz wrote.

DAHLCH3

Russell - redirect

1 A. Yes. All the numbers about billions of dollars that get
2 passed around are purely for PR -- meaning public relations --
3 purposes since no one can or has made an accurate estimate of
4 the total costs.

5 Q. Did you have a conversation with Mr. Donziger in 2003
6 regarding the purpose for your estimate?

7 A. Yes. Several.

8 Q. And was it consistent or inconsistent with what's stated
9 there regarding the billions of dollars getting passed around
10 for purely for PR purposes?

11 THE COURT: Sustained as to form.

12 Q. What did Mr. Donziger tell you in 2003 with respect to your
13 cost estimate and PR?

14 THE COURT: If anything.

15 A. I believe that I made in my written declaration, I believe
16 that I said and indicated that Mr. Donziger was intending to
17 use this cost estimate to get Chevron's attention and to
18 attempt to get them to settle the case.

19 MR. BRODSKY: May I approach, your Honor?

20 THE COURT: You may.

21 Q. Showing you, Mr. Russell, Plaintiff's Exhibit 3203. Take a
22 moment to look at that, please.

23 A. Thank you.

24 MR. BRODSKY: For the record, at the top it says from
25 David Russell, re nothing personal but, with a Bates number

DAHLCHE3

Russell - redirect

1 DLR3558 through 3559 and it contains -- first two pages and the
2 last two pages are the same.

3 Q. If I could direct your attention, Mr. Russell, to the last
4 two pages, the part that's easier to read.

5 A. Yes, sir.

6 Q. Do you recognize this email exchange?

7 A. Very definitely.

8 Q. And who is it between?

9 A. It was between me and Steve Donziger, with a blind carbon
10 copy to my attorney at that point who was Sandra Lekan, Esq.,
11 and she had her own Lekan law firm.

12 MR. BRODSKY: We offer it, your Honor.

13 MS. LITTLEPAGE: No objection.

14 THE COURT: Received.

15 (Plaintiff's Exhibit 3203 received in evidence)

16 Q. Turning to the last page of the email, do you see where it
17 says, Dave, you need to chill?

18 A. I do.

19 Q. And the part 2, in addition to writing to you, if you want
20 to initiate a collection action, feel free. If you do that,
21 you will probably never get paid voluntarily by Joe, you will
22 incur legal costs, and the defense will be nonperformance.

23 Did Mr. Donziger ever say that to you in person?

24 A. Yes.

25 Q. Do you recall being asked questions about -- if you turn to

DAHLCHE3

Russell - redirect

1 tab 3 in your binder -- this Wall Street Journal article,
2 Defense Exhibit 1405, dated October 30, 2003?

3 A. Okay.

4 Q. Do you remember being asked questions and --

5 A. Yes.

6 Q. -- about this and giving answers?

7 A. Yes.

8 MR. BRODSKY: May I approach, your Honor?

9 THE COURT: Sorry?

10 MR. BRODSKY: May I approach?

11 THE COURT: Yes.

12 Q. I'm showing you Plaintiff's Exhibit 495 for identification.
13 Would you take a moment to look at that.

14 Mr. Russell, and if I could direct your attention to
15 the second page, first full paragraph starting with meanwhile.

16 A. Yes.

17 MS. LITTLEPAGE: Judge, we object to the admission of
18 this document.

19 THE COURT: It hasn't been offered yet.

20 MS. LITTLEPAGE: Okay.

21 Q. Do you see that, Mr. Russell?

22 A. I do.

23 Q. Is this an interview you gave in 2007 to the same newspaper
24 that you gave an interview to in Defendant's Exhibit 1405 in
25 2003?

DAHLCH3

Russell - redirect

1 THE COURT: I'm sorry, is the question whether the
2 Wall Street Journal is the Wall Street Journal?

3 Q. Did you give this interview, Mr. Russell, in 2007 and give
4 that answer?

5 A. Yes, I did, in 2007.

6 Q. Does it relate to your cost estimate?

7 A. It does.

8 MR. BRODSKY: Your Honor, we offer 495.

9 MS. LITTLEPAGE: Judge, are they offering the entire
10 document or just that paragraph Mr. Russell has referenced?

11 THE COURT: What's the answer?

12 MR. BRODSKY: That paragraph, your Honor, would be
13 sufficient for us.

14 MS. LITTLEPAGE: With those redactions, no objection.

15 THE COURT: Okay. So the first full paragraph on the
16 second page of Plaintiff's Exhibit 495 is received. The rest
17 of the exhibit is not.

18 (Plaintiff's Exhibit 495, redacted received in
19 evidence)

20 Q. Mr. Russell, do you recall being asked with respect to the
21 Defense Exhibit 1405 in tab 3 of the binder questions about
22 describing the area in the concession, former concession area
23 as larger, quote, size wise, larger than the Chernobyl
24 disaster?

25 A. Yes.

DAHLCHE3

Russell - redirect

1 Q. And do you remember giving your answers?

2 A. Yes.

3 Q. Were your answers in October 30, 2003 -- was the
4 information you provided in this article, October 2003, based
5 on statements to you by Mr. Donziger or your own analysis?

6 A. They were based on my own analysis because I had been over
7 in the area close to and had done some study on Chernobyl.

8 Q. Did you ever visit Chernobyl?

9 A. No. I did a desk study on cleanup of Chernobyl soils for
10 the U.S. Trade and Development agency, probably 1998, maybe
11 '99.

12 Q. When you said size wise to the reporter, were you comparing
13 the contamination levels or the physical size of a particular
14 area or something else?

15 A. Physical size.

16 Q. And by physical size, you meant nothing to do with the
17 actual contamination?

18 A. That's correct.

19 THE COURT: So is it accurate to understand you as
20 saying that at that time your understanding of the area in
21 question in Ecuador in terms of square miles or hectares or
22 acres was comparable to the size of the polluted area at
23 Chernobyl as you then understood it; is that what you're
24 saying?

25 THE WITNESS: Yes, sir.

DAHLCHE3

Russell - redirect

1 THE COURT: All right. Go ahead.

2 Q. Did there come a time in 2004 when you spoke to
3 Mr. Donziger about using the word Chernobyl in connection with
4 the former concession area in Ecuador?

5 A. Yes.

6 Q. Did you speak to him about that analogy?

7 A. Yes.

8 Q. What did you tell him?

9 A. Told him to drop it.

10 Q. Did you give him a reason?

11 A. The contamination levels that we were finding at that
12 point -- and I believe it was late 2004 -- were not a good
13 comparison to the situation at Chernobyl.

14 Q. And they were not a good comparison because? Why?

15 A. No, I didn't say cost.

16 Q. I apologize. Did you give him a reason why they were not a
17 good comparison?

18 A. The types of contamination were different and the levels of
19 contamination and harm would have been different. One was a
20 radioactive source; the other one was chemical exposure.

21 MR. BRODSKY: May I approach, your Honor?

22 Q. Showing you a one-page document, Mr. Russell, would you
23 take a moment to look at it. It's Plaintiff's Exhibit 705 for
24 identification.

25 It's for identification purposes an email from Dave

DAHLCH3

Russell - redirect

1 Russell sent Thursday, November 4, 2004, 6:12 a.m., to a number
2 of people, including SDonziger@yahoo.com, with the Bates number
3 DONZHDD54028.

4 Do you see that, Mr. Russell?

5 A. I do.

6 Q. Your email references a meeting of senior lawyers
7 representing the litigation.

8 Where did that meeting take place?

9 A. It took place in New York.

10 Q. In Manhattan?

11 A. Best of my recollection, yes.

12 Q. Who suggested -- was Mr. Donziger present at the meeting?

13 A. Yes.

14 Q. And what did you mean when you said that testing for -- the
15 senior lawyers representing the litigation which suggested that
16 the analysis for BTEX and GRO would be counterproductive to the
17 case?

18 A. The lawyers present at the meeting as I recall were
19 Cristobal Bonifaz, Steven Donziger, and Alberto Wray.

20 And the substance of this message was that the data
21 that we were finding from some of the analysis that we are
22 performing were much more indicative and the fact that we're
23 finding BTEX, which is benzene, toluene, ethylbenzene, and
24 xylene; and GRO, which is gasoline range organics; are much
25 more indicative of contamination from Petroecuador rather than

DAHLCHE3

Russell - redirect

1 from Texaco because these compounds are volatile and degrade
2 quickly in hot, wet, warm environment such as in the jungle.

3 Q. After this meeting, did they -- did you do any further
4 testing for BTEX and GRO in the former concession area?

5 A. I don't believe we did. That's why we switched to total
6 petroleum hydrocarbons.

7 Q. Mr. Russell, you were asked some questions regarding
8 Dr. Calmbacher; do you remember those questions --

9 A. I do.

10 Q. -- on your cross-examination and your answers?

11 A. Yes, sir.

12 Q. And you were shown, if you would turn to tab 28 in your
13 binder, defense binder, Plaintiff's Exhibit 723, you were shown
14 this document.

15 Do you remember being shown this document?

16 A. Yes, sir.

17 MR. BRODSKY: May I approach, your Honor?

18 THE COURT: You may.

19 Q. I'm showing you, Mr. Russell, one-page document,
20 Plaintiff's Exhibit 3206 for identification. Would you take a
21 moment to look at that. At the top it says from Dave Russell,
22 sent Monday, January 31, 2005, to Steven Donziger, subject,
23 travel.

24 Do you see that?

25 A. I do.

DAHLCHE3

Russell - redirect

1 Q. Is this an email that you sent to Mr. Donziger in
2 January 2005?

3 A. It was.

4 Q. Does it relate to Dr. Calmbacher's reports?

5 A. It does.

6 MR. BRODSKY: We offer 3206, your Honor.

7 MS. LITTLEPAGE: No objection.

8 THE COURT: Received.

9 (Plaintiff's Exhibit 3206 received in evidence)

10 Q. Mr. Russell, where you say at the end, on balance, just as
11 I won't let you put words in my mouth, his professional
12 certification is hanging on the line with this one; what did
13 you mean when you said his professional certification is
14 hanging on the line with this one?

15 A. When either of -- or let me correct that. When a certified
16 industrial hygienist stamps and certifies a report, it is his
17 professional reputation and perhaps his certification or
18 license to call himself a certified professional hygienist,
19 which is a valuable commodity, in lieu of falsifying reports or
20 anything like that, it's just not done.

21 And so the import and thrust of that would be to say
22 this is very important, leave it alone, leave it exactly as
23 filed because you could create liability for Charles Calmbacher
24 if you altered this report.

25 Q. Prior to talking about his professional certification, what

DAHLCH3

Russell - redirect

1 did you mean when you said just as I won't let you put words in
2 my mouth to Mr. Donziger?

3 A. There were other instances where I communicated in writing
4 with Mr. Donziger where he had taken words that I had written
5 to him and used them in a publicity release but they went
6 substantially beyond what I had either stated or implied, and I
7 was not tremendously trusting that if not left -- if not
8 reminded that the report would go in, the reports would go in
9 as submitted.

10 MR. BRODSKY: Your Honor, may I approach?

11 THE COURT: You may.

12 Q. Showing you, Mr. Russell, one-page document marked
13 Plaintiff's Exhibit 3208 for identification.

14 MR. BRODSKY: Your Honor, we offer -- I forgot to
15 offer the last exhibit, I offer it.

16 MS. LITTLEPAGE: No objection.

17 MR. BRODSKY: 3206.

18 THE COURT: 3206 was received.

19 MR. BRODSKY: Thank you, your Honor.

20 THE COURT: Now you have 3208.

21 MR. BRODSKY: Yes.

22 Q. One-page email. At the top it says from Dave Russell,
23 dated October 12, 2004, to Steve Donziger, copied
24 CCalmbacher@earthlink.net.

25 Do you recognize this, Mr. Russell?

DAHLCH3

Russell - redirect

1 A. I do.

2 Q. Is this an email exchange you had with Mr. Donziger in
3 October 2004?

4 A. Yes.

5 Q. Does it relate to the subject line there, misquoting me is
6 not a good idea?

7 A. It is.

8 MR. BRODSKY: Your Honor, we offer 3208.

9 MS. LITTLEPAGE: No objection.

10 THE COURT: Received.

11 (Plaintiff's Exhibit 3208 received in evidence)

12 Q. Is this an exhibit, Mr. Russell, of Mr. Donziger misquoting
13 a conclusion you've made in connection with your work in Lago
14 Agrio?

15 MS. LITTLEPAGE: Objection, leading.

16 THE COURT: Rephrase it.

17 Q. Mr. Donziger, excuse me, Mr. Russell, where you say, Steve,
18 I must protest; do you see that?

19 A. I do.

20 Q. What were you protesting?

21 A. I was protesting the fact in the -- at the end of the I
22 guess it's the second paragraph, I checked back and found that
23 my memo to you had been rewritten to strengthen and make a
24 conclusion I never made, and those words are in highlights or
25 bold.

DAHLCH3

Russell - redirect

1 Q. I'm sorry, did you finish?

2 A. Yes.

3 Q. What conclusion did Mr. Donziger reach that you had not
4 reached?

5 A. Mr. Donziger represented that there was evil intent in the
6 mishandling of samples through the process of shipping the
7 samples into a laboratory in the United States. I did not
8 conclude that. I could not conclude that because the samples
9 were inspected by U.S. Department of Agriculture personnel.

10 Q. After you sent this email to Mr. Donziger in October 2004,
11 did Mr. Donziger respond?

12 A. I don't recall a response.

13 Q. Finally, Mr. Russell, you testified during
14 cross-examination in part, quote, I had become thoroughly
15 disillusioned with my own cost estimates and had indicated that
16 and was basically no longer working for the original
17 plaintiffs.

18 Do you remember testifying to that --

19 A. I do.

20 Q. -- on cross-examination?

21 A. Yes.

22 Q. What did you mean when you said you had become thoroughly
23 disillusioned with your own cost estimate?

24 A. The amount of data that I saw had indicated that it did not
25 square up or did not -- it was not representative of the

DAHLCH3

Russell - redirect

1 assumptions that I made back a year earlier or more than a year
2 earlier by that point of the levels of contamination we might
3 expect which would be in need of remediation. So the
4 contamination was not there.

5 Q. And you said, went on to say and had indicated that.

6 To whom had you indicated that information?

7 A. I had indicated that to Mr. Donziger, to Alberto Wray, to
8 Cristobal Bonifaz.

9 Q. And what year was the first time you indicated to
10 Mr. Donziger that information?

11 A. 2004.

12 Q. On one occasion or more than one occasion did you tell
13 Mr. Donziger that?

14 A. More than one occasion. It would have been after we
15 started getting some of the analytical data back from the
16 laboratory.

17 Q. You were asked questions, do you recall, Mr. Russell, being
18 asked questions and giving answers regarding the use of your
19 cost estimate following your cease and desist letter going out?

20 A. I do.

21 Q. Would you turn to tab 23 in the defense binder, Plaintiff's
22 Exhibit 485.

23 A. Yes.

24 Q. And by March 20, 2007, the date of this press release, how
25 many occasions had you written to Mr. Donziger and told him not

DAHLCH3

Russell - redirect

1 to use your cost estimate?

2 A. As I recall, at least two or three.

3 Q. And on how many occasions, approximately, had you told him
4 in person or by telephone not to use your cost estimate?

5 A. Again, two or three.

6 Q. And if you turn to the second page, the title, do you see
7 it highlighted, 6 billion, on the first page?

8 A. I do.

9 Q. Do you see that, tab 23?

10 A. I do.

11 Q. If you turn to the second page, the second full paragraph,
12 if we can blow that up, the only independent damage assessment,
13 do you see that?

14 Would you read that silently to yourself, that
15 paragraph.

16 A. I'm familiar with that.

17 Q. Is that your company, the U.S. firm Global Environmental
18 Operations?

19 A. It is.

20 Q. And do you recall being asked questions and giving answers
21 regarding whether there was some other cost estimate,
22 independent cost estimate out there; do you remember that on
23 your cross-examination?

24 A. I do, and as I recall the question was do I know
25 Mr. Penafiel, Fausto Penafiel.

DAHLCHE3

Russell - redirect

1 Q. Do you see where it says the only independent damage
2 estimate; do you see that?

3 A. I do.

4 MR. BRODSKY: No further questions.

5 THE COURT: All right. Any redirect? Recross?

6 MS. LITTLEPAGE: Yes, sir. Judge, may I ask two
7 questions.

8 THE COURT: Yeah, let's make it real recross.

9 RECROSS EXAMINATION

10 BY MS. LITTLEPAGE:

11 Q. Mr. Russell, let me ask this question.

12 Did you ever get to see the data, the sampling data of
13 Chevron's experts on the sites in Ecuador?

14 A. No.

15 Q. And the last time you saw any data of sampling data would
16 have been 2005 or previously?

17 A. Yes, aside from the Alexis data.

18 MS. LITTLEPAGE: Thank you.

19 THE COURT: Thank you.

20 Mr. Gomez, anything?

21 MR. GOMEZ: Nothing, your Honor.

22 THE COURT: I have a couple questions before you
23 leave, Mr. Russell.

24 THE WITNESS: Yes, sir.

25 THE COURT: Could somebody please provide Mr. Russell

DAHLCH3

Russell - recross

1 with Plaintiff's Exhibit 3206 or tell him where in the binder
2 to find it.

3 Do you have it?

4 MR. BRODSKY: Sorry, your Honor. I'm just looking for
5 it. 3206.

6 THE WITNESS: Yes.

7 THE COURT: It's something you handed up, Mr. Brodsky.

8 MR. BRODSKY: Yes, your Honor, I have it. Sorry.

9 BY THE COURT:

10 Q. Do you have it, Mr. Russell?

11 A. Yes, sir.

12 Q. It refers to XDrive.

13 A. Yes.

14 Q. Do you know what XDrive was or is?

15 A. Yes. It is -- it was a method that we used so that we
16 could transfer reports and files back and forth when they were
17 larger than what could be transmitted by email. The current
18 equivalent of that would be using the cloud to or I use Drop
19 Box. So it's a way that I can transfer large files back and
20 forth and other people can look at them and edit them and so
21 on.

22 Q. You're referring to digital files, I take it?

23 A. Digital files, yes, sir.

24 Q. And was XDrive some external service provider or was it --

25 A. It was an external service provider.

DAHLCH3

Russell

1 Q. And do you know where it was located?

2 A. I do not.

3 Q. And what was the practice that you and others involved on
4 the Lago Agrio plaintiffs side used with respect to XDrive
5 during the time that you were involved in that?

6 A. For the reports, as I recall, the reports would be written
7 either in Lago Agrio or in -- Chuck would have written them in
8 Atlanta, and they would be perhaps edited or reviewed by Chuck
9 for final content and conclusions and recommendations and so on
10 for the drive and then printed in, once they were finalized,
11 then they were printed down in Lago Agrio on different size
12 paper so they had a little bit of a -- little bit of different
13 formatting, but not much.

14 Q. And do you know who on the Lago Agrio side of the case had
15 access to the XDrive in the period you were involved?

16 A. Edison, the team which was assembling the reports in
17 Alberto Wray's office, and Steven Donziger had them, had access
18 as well.

19 Q. And did he have access from only in Ecuador or elsewhere?

20 A. From elsewhere.

21 Q. Did he have --

22 A. From wherever. It's the type of service that you can just
23 sign in to this and you can pull up the files. It's password
24 protected and so on.

25 Q. Now, on January 31, 2005, the date of Plaintiff's

DAHLCH3

Russell

1 Exhibit 3206, did you know where Mr. Donziger physically was?

2 A. No, I do not.

3 Q. Do you know whether he was in Ecuador or in the United
4 States?

5 A. I believe he was in the United States.

6 Q. And the basis for your belief is what?

7 A. A discussion, the initial line, I'm probably leaving here
8 in about an hour to go to the airport to get a ticket for
9 Miami. I'll drop the stuff for Edison at DHL so that he will
10 have it on Tuesday.

11 Q. So you were sending him a package by DHL?

12 A. I was sending him a package of signed sheets that had
13 Chuck's initials and that and a final sheet, and we were
14 relying on them to take the material off the XDrive and
15 transcribe it accurately and completely and not to change any
16 of the conclusions.

17 Q. And was the contemplation that then the signature pages you
18 were sending by DHL would be affixed to whatever was printed
19 off the XDrive?

20 A. Yes, sir.

21 Q. And did you discuss that with Mr. Donziger?

22 A. Yes, sir. That was standard operating procedure.

23 Q. And did you use DHL to -- when you were in Ecuador to
24 transmit documents to any place except the United States?

25 A. No, sir.

DAHLCH3

Russell

1 Q. Did you ever use DHL to transmit documents to Mr. Donziger
2 anywhere other than New York?

3 A. No, sir, I don't believe I did.

4 Q. And there was one other thing I wanted to ask you about.

5 THE COURT: Could we give the witness Plaintiff's
6 Exhibit 705, which was referred to in the last bit of
7 examination.

8 THE WITNESS: Yes, sir. I have it.

9 Q. Now, first of all, remind me, please, what the acronyms
10 mean. BTEX is benzene, toluene, and what else?

11 A. Ethylbenzene, E-T-H-Y-L-B-E-N-Z-E-N-E.

12 Q. Yes.

13 A. And the last one is xylene, X-Y-L-E-N-E.

14 Q. And those are all organic hydrocarbons?

15 A. They are organic hydrocarbons. They are classified as
16 aromatic hydrocarbons. They also have some immediate health
17 effects on exposure. For example, benzene is a carcinogen.
18 Toluene is it used to be used in paints and it is slightly
19 narcotic.

20 Q. I think you've gone beyond the question.

21 A. Sorry.

22 Q. Quite sufficient. And GRO?

23 A. Gasoline range organics.

24 Q. Okay. Now, you referred to a meeting and you told us, as I
25 remember, that the meeting you referred to in Plaintiff's 705

DAHLCH3

Russell

1 took place in Manhattan. Is that right?

2 A. Yes, sir.

3 Q. And you told us the names of certain lawyers who were
4 present. Were you present at the meeting as well?

5 A. For part of it.

6 Q. And did you say anything at the meeting to whoever else was
7 there about analyses for BTEX and GRO?

8 A. I said that the analyses that we were doing on the various
9 sites that we had information on at the time did not show any
10 of these compounds at the types of levels which would be
11 indicative of any sort of health effects.

12 And I went further to qualify that with regard to the
13 information that is in the memo because the presence of these
14 compounds, if they were found -- I'm sorry, the presence -- we
15 were finding these compounds. There we go. I'm sorry. I was
16 confused.

17 We found BTEX and GRO, and that was indicative of
18 recent contamination rather than contamination which would have
19 been ten or perhaps 20 years old from Texaco.

20 Q. And did you make any suggestion in light of that?

21 A. I don't recall making a suggestion. But the -- in the
22 ensuing discussion, the recommendation came down, well, then
23 stop analyzing for this.

24 Q. And who made that recommendation?

25 A. Some of the people sitting around the table which would

DAHLCH3

Russell

1 have been Bonifaz, Donziger, Kohn, and Alberto Wray.

2 Q. And did you make any change in what you were doing in
3 Ecuador in terms of looking at samples in consequence of what
4 was said at that meeting to you?

5 A. Yes, sir. Those were taken as instructions.

6 Q. And what change occurred?

7 A. We stopped analyzing for those compounds. We started
8 instead substituting a less reliable measure which was total
9 petroleum hydrocarbons.

10 Q. And are there various methods to analyze samples for TPH?

11 A. Yes. There are several different methods that one can use.
12 The analytical problem with TPH is that TPH methods currently
13 in use can show up naturally occurring compounds as an
14 indication of petroleum, so give you a false positive.

15 Q. Did you select for the further work in Ecuador on behalf of
16 the Ecuadorian plaintiffs a particular TPH method or did you
17 use more than one?

18 A. I believe we used whatever the laboratory had available,
19 and it may have been the EPA method that was recommended. I
20 believe it was the infrared method, but I can't recall right at
21 the moment.

22 Q. Did any of the methods that subsequently were used while
23 you were supervising this activity distinguish between TPH
24 attributable to recent activity on the site as compared to
25 activity a considerable period in the past?

DAHLCHE3

Russell

1 A. The TPH test would not be able to discriminate, make that
2 discrimination, sir.

3 THE COURT: All right. Thank you.

4 Does counsel on either side wish to examine further in
5 light of my questions?

6 MR. BRODSKY: No, your Honor.

7 MS. LITTLEPAGE: No, your Honor.

8 MR. GOMEZ: No, your Honor.

9 THE COURT: All right. We'll break for lunch.
10 2 o'clock.

11 (Luncheon recess)
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DAH8CHE4

McMillen - direct

AFTERNOON SESSION

2:00 p.m.

THE COURT: OK. Next witness, please.

MS. NEUMAN: Good afternoon, your Honor. Chevron calls Sara McMillen to the stand.

SARA McMILLEN,

called as a witness by the plaintiff,

having been duly sworn, testified as follows:

THE DEPUTY CLERK: State your name and spell your last name for the record.

THE WITNESS: My name is Sara McMillen,
M-C-M-I-L-L-E-N.

THE COURT: Proceed, Ms. Neuman.

DIRECT EXAMINATION

BY MS. NEUMAN:

Q. Good afternoon, Ms. McMillen.

MS. NEUMAN: Your Honor, may I approach the witness?

THE COURT: You may.

Q. Ms. McMillen, do you have Exhibit 3300 in front of you, plaintiff's exhibit?

A. Yes.

Q. Do you recognize that document?

A. Yes.

Q. What is it?

A. This is my direct testimony.

DAH8CHE4

McMillen - direct

1 Q. When was the last time you reviewed your direct testimony?

2 A. This morning.

3 Q. Have you made any changes to your testimony since it was
4 signed originally?

5 A. Yes. I made some changes this morning.

6 Q. To what paragraph did you make a change?

7 A. The first change is in paragraph 22. I deleted "court
8 appointed."

9 Q. Did you initial that change?

10 A. I did.

11 Q. Why did you make that change?

12 A. Because I wasn't certain whether or not the court appointed
13 the expert. I just wasn't sure about the civil procedure that
14 was involved there.

15 Q. Did you make any other changes?

16 A. Yes. I made two other changes.

17 Q. What paragraph is your next change in?

18 A. It's in paragraph 71.

19 Q. What did you change there?

20 A. I deleted "a pit of fresh," and I deleted "sole."

21 Q. Why did you make those changes?

22 A. I made those changes because, first of all, the pit is not
23 composed just of crude oil, and also because I wasn't there at
24 the site when it happened. I didn't feel like, from a
25 scientific point of view, I could say whether or not it was

DAH8CHE4

McMillen - direct

1 fresh. And I crossed out sole because I believe there are two
2 pits at this site, one of which has already been remediated by
3 Petroecuador.

4 Q. Are there any other changes to your direct testimony?

5 A. No.

6 Q. Are the changes that you just described for me noted in
7 Exhibit 3300 that you have in front of you?

8 A. Yes, they are.

9 MS. NEUMAN: We move the admission of Exhibit 3300,
10 your Honor.

11 THE COURT: Received on the same basis as the other
12 statements.

13 (Plaintiff's Exhibit 3300 received in evidence)

14 MS. NEUMAN: Also, on the basis of Ms. McMillen's
15 direct testimony, the plaintiffs would move the admission of
16 the exhibits cited therein. I have them on an exhibit that's
17 marked 3300A, or would you prefer that I read each one into the
18 record?

19 THE COURT: How many are there?

20 MS. NEUMAN: It's close to 35.

21 THE COURT: Let's just mark 3300A for identification
22 and the exhibits listed thereon are received subject to the
23 same procedure we have been using.

24 MS. NEUMAN: Thank you, your Honor. Pass the witness.

25 THE COURT: Thank you.

DAH8CHE4

1 Cross-examination.

2 MS. LITTLEPAGE: Judge, preliminarily, can I deal with
3 some of the objections I have to Ms. McMillen's declaration or
4 witness statement? We will be filing detailed objections on
5 the statement, but there are a couple of sections that I would
6 like to have the Court look at first and see if there is an
7 issue that I would need to cross-examine on.

8 THE COURT: Yes.

9 MS. LITTLEPAGE: The first is page 9, paragraph 19.

10 THE COURT: What is the problem?

11 MS. LITTLEPAGE: Judge, there is an explanation on
12 paragraph 19 from Ms. McMillen about signatures of Dr.
13 Calmbacher. She is obviously not an expert in handwriting
14 analysis. She is not an expert in signature analysis. She has
15 no personal knowledge of Mr. Calmbacher's signature. She is
16 not even opining which one she thinks is his signature. So we
17 would object on lack of foundation, lack of expertise.

18 THE COURT: It's of course possible to take a great
19 deal of time with this, but let's try not to.

20 It is obvious to the naked eye that the three
21 signatures are inconsistent. You don't have to be a
22 handwriting expert to know that. She offers no opinion as to
23 which, if any, of them is genuine. And the only opinion she
24 offers is that she is led to believe by the inconsistency that
25 he had not signed all of them personally.

DAH8CHE4

1 Now, I don't see that there is anything to
2 cross-examine about, frankly, but maybe you can enlighten me.

3 MS. LITTLEPAGE: I will take the Court's guidance and
4 not cross-examine on that issue.

5 THE COURT: I was offering you observations. It's
6 your call.

7 MS. LITTLEPAGE: May I proceed?

8 THE COURT: Yes. Go ahead.

9 MS. LITTLEPAGE: Judge, may I approach?

10 THE COURT: There were no other objections that you
11 wanted to raise?

12 MS. LITTLEPAGE: We have objections on almost every
13 line of Ms. McMillen's testimony, but according to the Court's
14 procedure, we will file those.

15 THE COURT: Fine.

16 CROSS-EXAMINATION

17 BY MS. LITTLEPAGE:

18 Q. Ms. McMillen, do you have a three-ring binder in front of
19 you that has your name on it?

20 A. Yes.

21 Q. Inside should be documents under tabs, and I will try and
22 direct you to the tab I am going to talk about. And the
23 documents should be highlighted, but if you lose me along the
24 way, just tell me and I will try and show you what I am talking
25 about.

DAH8CHE4

McMillen - cross

1 A. OK.

2 Q. Can you tell me first, tab 1 is the direct testimony of
3 Sara McMillen, Plaintiff's Exhibit 3300. Can you tell me how
4 that declaration was prepared?

5 A. Yes. I dictated my testimony to an attorney who asked me
6 questions for clarification and they transcribed it, and then I
7 reviewed it and edited it as needed.

8 THE COURT: Just for the record, this tab 1 does not
9 include the three changes the witness testified she made this
10 morning. I am just noting it.

11 What is it, Ms. Neuman?

12 MS. NEUMAN: I am just noticing that tab 1 has
13 highlighting and handwriting that's not Ms. McMillen's.

14 THE COURT: Obviously, counsel has been using the
15 highlighting all along. We all understand that. And somebody
16 has written in line numbers, which we have been dealing with
17 all morning. Is there anything else?

18 MS. NEUMAN: Yes. On page 9 of mine at least, there
19 is some other handwritten notes. I am not sure if I should tab
20 them or not. They appear to be objections in the margin.

21 MS. LITTLEPAGE: She is correct. My notes on this
22 specific witness statement made it into this book. I don't
23 think it makes any difference, but if the Court thinks it makes
24 a difference, I can hand up the new version.

25 THE COURT: We just are all going to ignore them.

DAH8CHE4

McMillen - cross

1 Let's go on.

2 BY MS. LITTLEPAGE:

3 Q. I am sorry. We interrupted you. You said you had dictated
4 your testimony. How long did it take?

5 A. I spent, I think, about two and a half days dictating.

6 Q. Was the attorney in the room with you or were you dictating
7 over the phone?

8 A. In the room.

9 Q. When did you spend those two and a half days?

10 A. It was a couple of weeks ago. I can't remember the exact
11 dates.

12 Q. Can you give us a week? Was it in this week, was it over
13 the weekend, anything that would identify when you started the
14 declaration?

15 A. I think it was the week before last.

16 Q. Then how did it come to be printed for you to sign it?

17 A. It was delivered to me by a courier.

18 Q. Delivered where?

19 A. To my home.

20 Q. Where is your home?

21 THE COURT: Let's not.

22 MS. LITTLEPAGE: I don't want her address. Whether
23 it's in New York.

24 Q. Do you live in New York?

25 A. No. I live in California.

DAH8CHE4

McMillen - cross

1 Q. Did you make edits or revisions to what was delivered to
2 you?

3 A. Yes, I did.

4 Q. Then how were those edits and revisions incorporated into
5 what you finally signed?

6 A. I spoke with the attorney by phone and we talked through
7 the edits, and then I believe it was sent to me via e-mail and
8 I printed it.

9 Q. When did you arrive in New York to prepare for your
10 testimony today?

11 A. I arrived last Saturday.

12 Q. How much time have you spent working with the attorney to
13 prepare for your testimony?

14 A. I spent sometime Saturday evening, Sunday, and sometime on
15 Monday.

16 Q. Have you met with the lawyers at all since Monday?

17 A. Yes.

18 Q. How long did you meet with the lawyers on Tuesday?

19 A. I'm not sure what you mean by meet with. I was here for
20 opening statements. So the attorneys were here. So it wasn't
21 like a meeting about my testimony.

22 THE COURT: Ms. Littlepage, I assume always that party
23 witnesses have met with counsel before testifying, and for
24 whatever value that has in assessing credibility, you can take
25 it as a given. Could we please get on to substance here?

DAH8CHE4

McMillen - cross

1 MS. LITTLEPAGE: Yes, sir.

2 Q. I believe your title was lead scientist for Chevron in the
3 Ecuadorian case. Would that be true?

4 A. That was not my title. I was the lead scientist, but
5 that's not a title per se.

6 Q. Can you tell us what was your responsibilities or role as
7 the lead scientist for the Ecuadorian case?

8 A. Yes. I was asked by the legal team to help them on
9 scientific issues in the case. I helped identify potential
10 experts who could work with Chevron. I reviewed most of the
11 documents that were submitted in Lago Agrio, which they have a
12 technical component to it. And I tried to make sure that
13 everything that was being done on Chevron's behalf was the best
14 science possible.

15 Q. Did you also review documents filed from the plaintiffs'
16 group in the Lago Agrio case?

17 A. Yes, I did.

18 Q. Was it you personally that chose the experts that Chevron
19 used in the case or was it a group of people that made that
20 decision?

21 A. I would recommend individuals to the legal team and the
22 final decision was theirs.

23 Q. Did Chevron have a number of experts that worked on
24 Chevron's behalf in that case?

25 A. Yes.

DAH8CHE4

McMillen - cross

1 Q. Do you know how many?

2 A. Probably, roughly, two dozen.

3 Q. Do you know how many experts worked on behalf of the
4 plaintiffs' group in the litigation?

5 THE COURT: Sustained. Please go to something
6 relevant.

7 Q. Could you provide for me the names of the experts that were
8 Chevron's experts in the Lago Agrio case?

9 MS. NEUMAN: Objection.

10 THE COURT: Sustained. Please go to something
11 relevant.

12 Q. If you go to your direct testimony on page 2, line 5. Are
13 you with me?

14 A. Yes.

15 Q. You indicate that one of your jobs was to review the
16 Chevron nominated technical expert reports for accuracy and
17 scientific rigor. Can you tell me what you did in that role?

18 A. Yes. Most of the judicial inspection reports that were
19 submitted I reviewed or I asked someone else on the team to
20 review them, and that was for the purpose of making sure they
21 were scientifically accurate, all the tables that they said
22 were there, the figure numbers were correct, and those kinds of
23 things, proof reading.

24 Q. Were you finished?

25 A. I am.

DAH8CHE4

McMillen - cross

1 Q. Would you meet with the experts and discuss their reports
2 with them before they were finalized?

3 A. No.

4 Q. Would you have an opportunity to comment on the experts'
5 reports before they were finalized?

6 A. I did provide them with any comments that I had, yes.

7 Q. Did you provide them with actual edits to the reports
8 before they were filed?

9 A. I sometimes made suggested edits if I thought there was
10 something that wasn't worded quite accurately or they had made
11 a mistake or had some figure number wrong or something like
12 that.

13 Q. Were you involved in the initial trial phase of the case in
14 2003?

15 A. No, I was not involved in 2003.

16 Q. Did you have any role in the initial trial phase?

17 MS. NEUMAN: Objection. Vague as to what the initial
18 trial phase is.

19 Q. Can you explain to us what was the initial trial phase of
20 the case when it first went back to Ecuador in 2003?

21 MS. NEUMAN: Objection. It calls for a legal
22 conclusion.

23 THE COURT: I sustain it on more grounds than that.
24 You're going to have to do better with your question.

25 Q. Did Chevron present any witnesses at the initial trial

DAH8CHE4

McMillen - cross

1 phase of the case in Ecuador?

2 MS. NEUMAN: Objection. Relevance. It calls for a
3 legal conclusion. The record speaks for itself.

4 THE COURT: Sustained.

5 Q. What phase did you get involved in?

6 A. I'm not sure what you mean by phase.

7 Q. When you got involved in the case, was the trial phase
8 over?

9 MS. NEUMAN: Objection.

10 THE COURT: Sustained. You're asking questions that
11 presuppose a meaning to trial phase, which for all I know is a
12 term of art in Ecuadorian civil procedure. There is no way
13 that I have any idea what you're talking about, nor would any
14 reviewing court, nor is there any reason to suppose that the
15 witness has any idea of what you're talking about. And even if
16 the witness were to answer, the answer would be based on some
17 assumption on her part which would be entirely unstated and
18 thus leave the whole record essentially as clear as a bowl of
19 chocolate pudding. If there is something specific you have in
20 mind, ask about it. I am not stopping you from that.

21 Q. Did any Chevron expert testify before the Ecuadorian court
22 in 2003?

23 A. What do you mean by Chevron expert? You mean a Chevron
24 employee?

25 Q. Do you understand the term Chevron expert?

DAH8CHE4

McMillen - cross

1 THE COURT: Look, counsel, we have a 216,000 page
2 record of the proceeding in Ecuador, right?

3 MS. LITTLEPAGE: Yes, sir.

4 THE COURT: OK. The answer is there, is it not?

5 MS. LITTLEPAGE: Judge, I don't know that I know the
6 answer to that.

7 THE COURT: Somebody on your side ought to, don't you
8 think?

9 MS. LITTLEPAGE: I believe someone on my side does
10 know the answer to that.

11 THE COURT: And if it's there, you can bring it to my
12 attention. This is not a constructive use of time. If there
13 is some specific inquiry you want to make, please get to it
14 without these vague terms or terms susceptible of many
15 meanings. Get there. I don't even know what you mean by
16 testified before the Ecuadorian court. I don't know if they
17 take live testimony. Do they? Do you know?

18 MS. LITTLEPAGE: Yes, sir, I do.

19 THE COURT: Maybe you will put an appropriate witness
20 on the stand or bring to my attention appropriate Ecuadorian
21 law that will inform me on that subject, but I am not simply
22 going to assume that the witness knows, and she is making quite
23 clear she doesn't.

24 Q. When did you get involved in the Ecuadorian case?

25 A. I was asked to start working on the case in 2004.

DAH8CHE4

McMillen - cross

1 Q. Were there any Chevron experts working on the case before
2 your involvement?

3 A. Again, I'm not sure what you mean by Chevron experts.

4 Q. Let's stop there. Did Chevron select experts for the
5 Ecuadorean case?

6 A. Do you mean -- again, I'm not sure what you mean. There
7 were different types of experts in the Ecuadorean case. So
8 there were judicial inspection experts. There is also rebuttal
9 experts. So I'm not sure what you mean. Sorry.

10 Q. Can you describe for us the different types of experts that
11 were used in the Ecuadorean case?

12 A. Yes. There were Chevron nominated judicial inspection
13 experts that took part in the judicial inspections that the
14 court ordered. Then there were also scientific experts on
15 behalf of Chevron who wrote specific expert reports in areas of
16 their expertise that would sometimes be attached to the
17 judicial inspection reports or be incorporated into a Chevron
18 rebuttal to a plaintiffs' expert report.

19 Q. Were there any other types of experts?

20 A. No, I don't think so.

21 Q. You say Chevron nominated. Would that be an expert that
22 Chevron had chosen and asked the court to appoint as an expert
23 in the case?

24 A. Each side in the Lago Agrio case had the opportunity to
25 nominate an expert that they had selected to the court, and

DAH8CHE4

McMillen - cross

1 then the court would appoint them as an expert for that party.
2 That's my understanding, but I'm not an expert in Ecuadorian
3 civil procedure.

4 Q. For the rebuttal experts, did they similarly have to be
5 appointed by the court?

6 MS. NEUMAN: Objection. It calls for a legal
7 conclusion.

8 THE COURT: Sustained.

9 Q. Do you know how many expert reports were submitted in the
10 case?

11 A. Hundreds, at least.

12 Q. In your declaration on page 5, line 10 -- I'm sorry, it's
13 line 13. Do you see where you're talking about Mr. Cabrera
14 appointed by the Ecuadorian court as a supposedly neutral
15 independent expert on line 13?

16 A. Yes.

17 Q. Can you tell me what is your definition of independent
18 expert in this context?

19 A. Well, I would use the language of the court, which was that
20 he was to be independent vis-a-vis the parties.

21 Q. Was Mr. Cabrera allowed to interact with the parties?

22 A. Again, I'm not an expert on civil procedure, but it was my
23 understanding that he was not to interact with the parties, and
24 I know he submitted documents to the court saying that he was
25 not interacting with the parties.

DAH8CHE4

McMillen - cross

1 Q. Was Mr. Cabrera allowed to receive materials from the
2 parties?

3 MS. NEUMAN: Objection. It calls for a legal
4 conclusion?

5 THE COURT: Sustained.

6 Q. Did you review any materials that Chevron submitted to
7 Mr. Cabrera?

8 A. Chevron only submitted materials through the court.

9 Q. Did Chevron submit materials through the court for
10 Mr. Cabrera?

11 A. Chevron only, to my knowledge, only submitted a response to
12 his reports.

13 Q. Did you review the materials submitted by the plaintiffs'
14 group through the court for Mr. Cabrera?

15 MS. NEUMAN: Objection. It assumes facts not in
16 evidence.

17 THE COURT: It certainly does. Sustained.

18 Q. Did the plaintiffs' group submit documents to the court for
19 Mr. Cabrera?

20 MS. NEUMAN: Objection. It calls for a legal
21 conclusion. The record speaks for itself.

22 THE COURT: No. Overruled.

23 Answer if you know.

24 A. It's my understanding that Chevron was not allowed to have
25 copies of anything that the plaintiffs submitted to

DAH8CHE4

McMillen - cross

1 Mr. Cabrera. We specifically asked for those documents and we
2 never got them.

3 Q. The court did not provide you copies?

4 THE COURT: Do you know one way or the other, Ms.
5 McMillen?

6 THE WITNESS: I don't remember the exact wording in
7 the documents. I just know we were never able to obtain a copy
8 of whatever, if anything, they gave to Mr. Cabrera.

9 Q. Did you review the filing with the court indicating that
10 the plaintiffs were giving documents to Mr. Cabrera through the
11 court?

12 A. I did not review that filing at the time. I was told about
13 it though.

14 Q. You talked about rebuttal experts. Were the Chevron
15 rebuttal experts Dr. Alvarez, Dr. Mackay, and Dr. Hinchee?

16 A. Those three scientists served as experts. There were many
17 other people who also served as rebuttal experts.

18 Q. Were those three some of Chevron's rebuttal experts?

19 THE COURT: That's what she just said, don't you
20 think?

21 Q. Did Chevron select those three experts?

22 A. Yes.

23 Q. Were they retained by Chevron?

24 A. They were retained by King & Spalding.

25 Q. Were they paid by Chevron?

DAH8CHE4

McMillen - cross

1 A. Yes.

2 Q. Did Chevron ask them to conduct specific assessments?

3 A. They were asked to address specific technical issues and
4 write a report and fair opinions.

5 Q. Did you review their expert report before they were
6 finalized?

7 A. I think they only wrote one report together, but yes, I am
8 sure I would have read it before it was submitted.

9 Q. Did you make any edits or changes or suggestions to their
10 report before it was finalized?

11 A. I might have. I don't remember.

12 Q. Would you turn to tab 2 of Defendants' Exhibit 1416, a
13 filing by Mr. Callejas on behalf of Chevron.

14 Do you recognize this document?

15 A. Can I have a moment to read it, please?

16 Q. Of course.

17 A. This is just the cover letter on top of the report, is that
18 right?

19 Q. Yes.

20 A. I have read it.

21 MS. LITTLEPAGE: We move to admit Defendants' Exhibit
22 1416.

23 MS. NEUMAN: No objection.

24 THE COURT: Received.

25 (Defendants' Exhibit 1416 received in evidence)

DAH8CHE4

McMillen - cross

1 Q. Ms. McMillen, if you look at the first sentence of the
2 second or the third paragraph, however you identify it on the
3 page, where it says, "I allowed myself to share for your
4 knowledge a technical and independent assessment for the
5 designated general plan of activities." Do you see that?

6 A. Yes.

7 Q. Would you have considered the assessment by Dr. Alvarez,
8 Dr. Mackay and Dr. Hinchee an independent assessment?

9 MS. NEUMAN: Objection. Form.

10 THE COURT: Sustained.

11 Q. Do you believe this is an accurate description of the
12 assessment done by Dr. Alvarez, Mackay and Hinchee?

13 A. Yes.

14 Q. It indicates that there has been a study conducted by three
15 international technicians. What study were Chevron's rebuttal
16 experts, Alvarez Mackay and Hinchee, doing?

17 A. Well, according to the document, they were reviewing
18 Mr. Cabrera's general plan of activities and commenting on it.

19 Q. So were they doing an independent study or just a review
20 with opinions?

21 MS. NEUMAN: Objection.

22 THE COURT: Sustained as to form.

23 Q. What type of study were the experts retained by Chevron
24 doing as to Mr. Cabrera's plan?

25 A. Well, they examined his plan, studied it, and wrote an

DAH8CHE4

McMillen - cross

1 opinion about whether it was adequate. I don't know because I
2 don't have that report here and I would have to see the
3 document again to remind me of its contents specifically.

4 Q. Would it be accurate to describe that study as an
5 independent assessment?

6 A. Yes.

7 Q. Can you tell me who either Mr. or Dr. Loehr is?

8 A. Yes. He was an expert who was retained by Chevron early in
9 the case. He is a retired chair in environmental engineering
10 at the University of Texas.

11 Q. Is he a doctor? Shall I say Dr. Loehr?

12 A. He is a doctor.

13 Q. Did you play a role in retaining Dr. Loehr as an expert for
14 Chevron?

15 A. I recommended him to the legal team.

16 Q. Did you assist Dr. Loehr in the preparation of his report
17 in the Ecuadorian case?

18 A. Which report are you referring to?

19 Q. Let me ask a better question. How many reports did Dr.
20 Loehr prepare?

21 A. I'm not certain. I think at least two or three.

22 Q. Would you have provided assistance on two or three of those
23 reports?

24 THE COURT: Is it a hypothetical question or are you
25 asking what she did?

DAH8CHE4

McMillen - cross

1 Q. Did you provide either assistance or edits to the two or
2 three reports of Dr. Loehr?

3 A. I would have given him any documents that he needed to
4 review or spoken with him about what it was he was being
5 retained to do. So that's what I would have done.

6 Q. Dr. Marquez, can you tell me who Dr. Marquez is?

7 A. Ralph Marquez is a retired -- I don't know his exact title,
8 but he was of the lead regulatory agency for the state of
9 Texas, and he submitted some comments in Lago Agrio. I believe
10 he only submitted one report and that was about his
11 observations of Mr. Cabrera's work in the field.

12 Q. Did you assist Dr. Marquez in the creation of that report?

13 A. No.

14 Q. Did you define for him the scope of the work that you
15 retained him for?

16 A. I don't recall that I ever spoke with Dr. Marquez. I think
17 he may have only spoke with the legal team that asked him to go
18 to Ecuador and observe.

19 Q. Did Chevron reimburse Dr. Loehr and Dr. Marquez for their
20 work in the Ecuadorian case?

21 A. Yes.

22 Q. If you turn to tab 3, Defendants' Exhibit 871, do you see a
23 Chevron press release dated July 30, 2007?

24 A. Yes.

25 MS. LITTLEPAGE: We move to admit Defendants' Exhibit

DAH8CHE4

McMillen - cross

1 871.

2 MS. NEUMAN: Not for the truth, but no objection
3 otherwise.

4 THE COURT: I am sorry. You're objecting to your own
5 press release insofar as it's offered for the truth?

6 MS. NEUMAN: No objection.

7 THE COURT: It's received.

8 (Defendants' Exhibit 871 received in evidence)

9 Q. If you look at the first paragraph, does this press release
10 discuss Dr. Rafael Marquez?

11 THE COURT: Sustained. It says what it says.

12 Next question.

13 Q. Would it be accurate to say that Dr. Marquez was going to
14 serve as an independent international observer and to provide
15 independent oversight in the Ecuadorian case?

16 A. He served as an observer to Mr. Cabrera's work. That's
17 what I know he did.

18 Q. Would it be accurate to call him an independent
19 international observer?

20 A. Yes.

21 Q. Would it be accurate to say he was going to provide
22 independent oversight?

23 A. I don't really understand why it says oversight. I think
24 they are referring to just his observing.

25 Q. Would it be accurate to say he was going to provide

DAH8CHE4

McMillen - cross

1 independent oversight?

2 THE COURT: Counselor, I am going to read back to you
3 your last several questions, and at the end of them, I am going
4 to ask you to tell me what the difference among them is.

5 Question 1: Would it be accurate to say that
6 Dr. Marquez was going to serve as an independent international
7 observer and to provide independent oversight in the Ecuadorian
8 case?

9 Question 2: Would it be accurate to call him an
10 independent international observer?

11 Question 3: Would it be accurate to say he was going
12 to provide independent oversight?

13 Now, the question for you is, exactly what is the
14 difference among those three questions?

15 MS. LITTLEPAGE: I think my questions are the same,
16 but it was her answers that prompted the next question. The
17 first answer did not discuss the word independent. She just
18 verified he was an international observer. The second time I
19 went to the second part of the question, which was -- there's
20 two independents in this sentence. One is he is an independent
21 observer and one is he is going to give an independent
22 oversight report.

23 THE COURT: That's not true of your second question,
24 but you have got an unqualified yes to the second question.

25 How about the third time?

DAH8CHE4

McMillen - cross

1 MS. LITTLEPAGE: I believe the third time dealt with
2 the second part of the sentence which has "and" in it.

3 THE COURT: Counselor, if I have to put a clock on
4 you, I will. But you better get on with this.

5 MS. LITTLEPAGE: Yes, sir.

6 BY MS. LITTLEPAGE:

7 Q. If you turn to tab 4, Plaintiff's Exhibit 872, is that a
8 Chevron press release dated November 24, 2007?

9 A. Yes.

10 MS. LITTLEPAGE: We move to admit Defendants' Exhibit
11 872.

12 MS. NEUMAN: No objection.

13 THE COURT: Received.

14 (Defendants' Exhibit 872 received in evidence)

15 Q. Does this press release indicate that Dr. Loehr and
16 Dr. Marquez are independent environmental experts?

17 THE COURT: Sustained.

18 We are getting very close to the line, counsel. We
19 are getting very close to the end of your examination. Your
20 point here for the last half hour is that in various contexts
21 Chevron used the word "independent" to describe experts whom
22 they nominated and were paid. I have got it. Clearly they
23 did.

24 Now, let's get on.

25 MS. LITTLEPAGE: May I just respond? I went back and

DAH8CHE4

McMillen - cross

1 looked at the amended complaint. The word "independent" forms
2 a very substantial part of the accusations against Mr.
3 Donziger, that he inappropriately used the word "independent"
4 in certain contexts. Their allegations are that he used it
5 inappropriately when he filed things with the court. So I
6 first used a court filing. He used it inappropriately when he
7 spoke to the press. So I used a --

8 THE COURT: I understand that.

9 MS. LITTLEPAGE: -- press release.

10 THE COURT: I understand that. I have got it. It
11 does not justify endless repetition. You have made your point.
12 The documents are in. Move on.

13 MS. LITTLEPAGE: Yes, sir.

14 Q. Let me ask you first about an expert called Marcelo Munoz.
15 Can you tell me who Dr. Munoz is?

16 A. He was a court appointed judicial inspection expert.

17 Q. By saying "court appointed," does that mean he was not a
18 Chevron nominated expert?

19 A. He was not nominated by either party.

20 Q. And if you turn to tab 6, Defendants' Exhibit 1067, do you
21 recognize Defendants' Exhibit 1067 as a filing in the Lago
22 Agrio case by Dr. Munoz, the expert we were just discussing?

23 A. Give me a moment to read it, please.

24 Q. Sure.

25 A. I would have to make an assumption that it is the court

DAH8CHE4

McMillen - cross

1 record. It doesn't have exactly the same format that I am used
2 to seeing in the court because usually it has the foja number
3 at the top of each page, which I don't see here.

4 Q. Do you see on the last page of the tab a stamp from the
5 court?

6 A. I do, which is why I am assuming it must be, but again,
7 it's not the usual format that I usually see.

8 Q. Can you tell me who engineer Guerrero is?

9 A. He is an engineer, an Ecuadorian engineer in Quito who
10 assisted the legal team in Ecuador.

11 Q. That was the Chevron legal team?

12 A. Yes.

13 Q. Was he an employee of Chevron?

14 A. He is not a Chevron employee.

15 Q. Was he a consultant or expert for Chevron in the Ecuadorian
16 case?

17 A. He was a contractor.

18 Q. Did Chevron's contractor engineer Guerrero meet with
19 Marcelo Munoz to discuss Dr. Munoz's work plan?

20 MS. NEUMAN: Objection. Lacks foundation. Hearsay.

21 THE COURT: Well, it's not calling for the content of
22 the communication so it's not hearsay, but there is no
23 foundation for it. You are at liberty to try to establish one.

24 Q. Did engineer Guerrero act as a consultant for Chevron in
25 the Ecuadorian case, and as part of that role, did he meet with

DAH8CHE4

McMillen - cross

1 Dr. Munoz?

2 THE COURT: The question is compound. Half of it was
3 answered.

4 MS. LITTLEPAGE: I'm sorry, Judge. Half was answered?

5 THE COURT: She said he was a contractor.

6 Q. Do you know if Chevron's contractor met with Dr. Munoz?

7 A. I don't know.

8 Q. Would it be appropriate for Chevron's contractor to meet
9 with Dr. Munoz?

10 MS. NEUMAN: Objection. It calls for a legal
11 conclusion.

12 THE COURT: Sustained.

13 Q. Were you aware that Dr. Munoz filed papers in the
14 Ecuadorian court when an issue came up about payment from
15 Chevron?

16 A. Are you referring to this document?

17 Q. I am.

18 A. I have seen this document before, but I don't know anything
19 about it other than what it says.

20 MS. LITTLEPAGE: We move to admit Defendants' Exhibit
21 1067.

22 MS. NEUMAN: No objection.

23 THE COURT: Received.

24 (Defendants' Exhibit 1067 received in evidence)

25 Q. Do you know what a technical planning meeting is?

DAH8CHE4

McMillen - cross

1 A. In this context, no, I don't know anything about this.

2 Q. Do you know what a work plan is in the context of the
3 Ecuadorian case?

4 THE COURT: Assuming that it has a single meaning in
5 the context of the Ecuadorian case.

6 A. The only work plan that I know about is the one that was
7 filed by Mr. Cabrera. Other than that, I don't think there is
8 a specific definition of a work plan. So, again, I don't know
9 anything about this other than what is written here.

10 Q. Could either side meet with a court appointed expert?

11 MS. NEUMAN: Objection. It calls for a legal
12 conclusion.

13 THE COURT: Sustained.

14 Q. Did Chevron meet with court appointed experts, if you know?

15 Did Chevron meet with court appointed experts, if you
16 know?

17 MS. NEUMAN: Objection. Vague as to court appointed.

18 THE COURT: In the context it certainly is. Try
19 again.

20 Q. Do you draw a distinction between court appointed experts
21 and Chevron retained experts in the context of the Ecuadorian
22 case?

23 A. I'm not sure what you mean.

24 Q. Well, you told me Dr. Munoz was a court appointed expert.

25 THE COURT: Counsel, nobody is trying to stop you from

DAH8CHE4

McMillen - cross

1 getting at anything appropriate you want to get at. The
2 witness testified already to the distinction between party
3 nominated experts in the judicial inspection process who were
4 appointed by the court after being nominated by the parties on
5 the one hand. She testified also to experts, at least one, who
6 was appointed by the court without a nomination of that
7 character. I don't remember whether that was in relation to
8 judicial inspections or otherwise. And that's only part of the
9 lack of clarity that we are having here.

10 Q. Dr. Munoz, was he nominated by Chevron?

11 A. No.

12 Q. Was he nominated by the plaintiffs' group?

13 A. No.

14 Q. Was he court appointed?

15 A. Yes.

16 Q. Is there some specific word that we could use to describe
17 Dr. Munoz and people who were court appointed other than court
18 appointed?

19 A. He was a court appointed judicial inspection expert.

20 Q. Could either party meet with court appointed judicial
21 experts?

22 MS. NEUMAN: Objection.

23 THE COURT: You have altered the answer of course.
24 She said he was a court appointed judicial inspection expert
25 and you dropped the word "inspection" from your next question.

DAH8CHE4

McMillen - cross

1 MS. LITTLEPAGE: Let me ask that question again.

2 Q. Could either party meet with court appointed judicial
3 inspection experts?

4 MS. NEUMAN: Objection. Vague.

5 THE COURT: Now, does that mean, is it theoretically
6 possible that they would meet, having been in the same
7 restaurant? Or are you asking a legal question? What are you
8 talking about?

9 MS. LITTLEPAGE: Judge, she was the chief scientist in
10 Ecuador.

11 THE COURT: Key word being scientist.

12 MS. LITTLEPAGE: I am trying to find out what the
13 process was in Ecuador dealing with the scientific experts.
14 Was there a practice of meeting with the court appointed
15 experts by either side?

16 THE COURT: You are welcome to ask her what she did,
17 what she was present at. You are not entitled to try to, or
18 even without trying, to get in through the backdoor of what
19 will later be cited back to me and in press releases all over
20 the world what will be portrayed or might be portrayed as a
21 witness buying into a legal proposition that the plaintiffs
22 have been trying very hard, the Ecuadorian plaintiffs, from the
23 beginning of all this litigation to convince me of.

24 Now, let's just proceed. You have experts all over
25 the place, as I remember, on what the Ecuadorian law is on this

DAH8CHE4

McMillen - cross

1 point, and I will decide the law in due course. If you want to
2 get to the facts, that's what we are here for.

3 MS. LITTLEPAGE: Yes, sir.

4 BY MS. LITTLEPAGE:

5 Q. Did you supervise a team of technicians, scientists, in the
6 Ecuadorian case?

7 A. I was the lead scientist assisting a legal team.

8 Q. Was engineer Guerrero in that team?

9 A. He is part of the technical team reporting to the Quito
10 legal team.

11 Q. Do you know if engineer Guerrero met with Mr. Munoz?

12 A. Again, all I know is what is written here. I haven't
13 spoken to Mr. Guerrero about it.

14 Q. Did you ever discuss with engineer Guerrero about meeting
15 with Mr. Munoz?

16 MS. NEUMAN: Objection. Asked and answered.

17 THE COURT: Overruled.

18 A. No, I did not.

19 Q. If you turn to Defendants' Exhibit 613, tab 7.

20 A. Yes.

21 Q. Can you tell me who is Kent Robertson?

22 A. He is a Chevron employee.

23 Q. What was his title?

24 A. It's media relations adviser.

25 Q. Do you know who James Craig is?

DAH8CHE4

McMillen - cross

1 A. Yes.

2 Q. Who is that?

3 A. He is a Chevron employee.

4 Q. Do you know who Mercedes Alvaro is?

5 A. I believe she is a reporter.

6 MS. LITTLEPAGE: We move to admit Defendants' 613.

7 MS. NEUMAN: Objection. Hearsay. Ms. McMillen is not
8 even on this e-mail.

9 MS. LITTLEPAGE: It's an admission of a party.

10 THE COURT: Well, the e-mail from Mercedes Alvaro to
11 Mr. Robertson is not a statement by a party. So that's out.

12 Both of the e-mails from Ms. Alvaro are out to the
13 extent they are offered for the truth. I haven't heard any
14 other sort of offer.

15 The e-mails from Mr. Robertson I will receive. So
16 Defendants' Exhibit 613 is received as to the e-mails from
17 Mr. Robertson.

18 (Defendants' Exhibit 613 received in evidence)

19 Q. If we look, it's hard to direct you, but the second e-mail
20 down on the first page from Kent Robertson to Mercedes Alvaro.
21 Do you see that? It's dated June 24, 2009, at 3:06 p.m.

22 A. Yes.

23 Q. Do you know if you or anybody on your team had phone
24 conversations with Mr. Munoz during the Ecuadorian case?

25 A. The third note down --

DAH8CHE4

McMillen - cross

1 THE COURT: The third note down is not in evidence.

2 THE WITNESS: I'm sorry.

3 THE COURT: Did you ever speak to Mr. Munoz?

4 THE WITNESS: No, I did not.

5 THE COURT: Did anybody at Chevron ever tell you that
6 he or she had spoken to Mr. Munoz?

7 THE WITNESS: No.

8 THE COURT: Orally or in writing?

9 THE WITNESS: No.

10 THE COURT: By that I mean did anyone at Chevron tell
11 you, orally or in writing, that he or she had spoken to
12 Mr. Munoz?

13 THE WITNESS: No, they did not.

14 THE COURT: Next question, counsel.

15 Q. Turn to tab 9, Defendants' Exhibit 612.

16 Is this e-mails between you and various people,
17 including Kent Robertson and James Craig?

18 A. Yes.

19 MS. LITTLEPAGE: We move to admit Defendants' Exhibit
20 612.

21 MS. NEUMAN: No objection.

22 THE COURT: Received.

23 (Defendants' Exhibit 612 received in evidence)

24 Q. If you go to page 3 of the document because the e-mails
25 come sort of from the bottom up, the bottom of page 3, did

DAH8CHE4

McMillen - cross

1 Mr. Robertson, on June 1, 2009, provide you with a statement
2 for your help?

3 THE COURT: That's what it says.

4 Q. Did you assist Chevron in looking at and reviewing press
5 statements concerning the Ecuadorian case?

6 A. Yes.

7 (Continued on next page)

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DAHLCHE5

McMillen - cross

1 Q. And in June of 2009, did you assist Mr. Robertson in
2 producing, in reviewing a press statement for Chevron?

3 A. I believe so.

4 Q. And if you look to the top of that page, on Monday, June 1,
5 at 11:44 p.m., did you respond to Mr. Robertson's email below?

6 A. I'm sorry, I'm not sure where you are.

7 Q. Top of the same page, page 3. Tell me when you're with me.

8 A. Yes, top of the page.

9 Q. On June 1, 11:44 p.m., did you respond to Mr. Robertson's
10 request?

11 A. Yes.

12 Q. Did you edit the press statement he had provided?

13 A. That's what it says, yes.

14 Q. The email that you sent also discusses data for samples
15 collected by Chevron and Munoz.

16 Did Mr. Munoz turn his samples that he collected over
17 to Chevron for analysis or did he independently analyze the
18 samples he took?

19 THE COURT: That doesn't exhaust the possibility, so
20 why don't you try to ask the question a piece at a time.

21 Q. What happened to the samples Mr. Munoz collected as a court
22 appointed expert?

23 MS. NEUMAN: Objection, lacks foundation.

24 Q. Court appointed judicial inspection expert.

25 MS. NEUMAN: Lacks foundation.

DAHLCH5

McMillen - cross

1 THE COURT: Precisely. Do you have any knowledge of,
2 first of all -- well, strike that.

3 Do you have any personal knowledge, Ms. McMillen, of
4 what Mr. Munoz did with the samples he collected?

5 THE WITNESS: What I know about those samples were
6 what he submitted to the court in his judicial inspection
7 expert in which he did submit the analytical data for his
8 samples.

9 Q. Was Chevron responsible for analyzing those samples?

10 A. No.

11 Q. Do you know what lab Mr. Munoz used to analyze his samples?

12 A. I don't remember. I would have to refer back to his
13 report.

14 Q. You indicate in this email that this type of press release
15 won't do anything against potential bombshell that Munoz may
16 drop if he agrees with everything Cabrera said.

17 Can you explain to me what you meant by potential
18 bombshell that Munoz may drop?

19 A. At this time I already was aware that the plaintiffs had
20 been interacting with Mr. Cabrera and had actively worked on at
21 least part of his report. So I was very concerned that they
22 may have also been working with Mr. Munoz and that he might
23 agree with some of the conclusions of Mr. Cabrera, but he did
24 not.

25 Q. And if you had no contact with Mr. Munoz, how did you

DAHLCH5

McMillen - cross

1 anticipate a potential bombshell from Mr. Munoz?

2 A. I was just concerned that the plaintiffs might be working
3 with Mr. Munoz as well. That's all I was referring to here.

4 Q. If you turn to the page 2 going backwards, did Mr. Craig
5 respond to you by email on June 1, 2009 at 9:17 p.m.?

6 A. Yes.

7 Q. And does he -- I want to ask you a question.

8 There's a notation about preempting Munoz's findings.
9 Do you see that under No. 2?

10 A. Yes.

11 Q. Did Chevron have access to Mr. Munoz's findings?

12 A. No, we did not.

13 Q. Did you know what Mr. Munoz's findings were?

14 A. At this time, no.

15 Q. And if you turn to the top of that page, did Mr. Craig send
16 another email at 9:51 p.m.? The start of the email is on the
17 bottom of page 1 and it goes over to page 2.

18 Do you see that?

19 A. Yes.

20 Q. And there's a discussion about offsetting a damaging report
21 by Munoz. And, again, was there a report that Chevron was
22 aware of?

23 A. No, there was not.

24 Q. On page 22, line 23 of your declaration, are you with me,
25 page 22, line 23?

DAHLCH5

McMillen - cross

1 A. I don't have line numbers marked. In your version --

2 THE COURT: Looks like paragraph 47. Is that right,
3 Ms. Littlepage, you're at paragraph 47?

4 MS. LITTLEPAGE: Yes, sir.

5 Q. It's line 23, the last sentence of page 22.

6 THE COURT: Thank you. Do you see it?

7 THE WITNESS: Yes, I do.

8 Q. Okay. And it indicates that you reviewed some documents in
9 preparation for a mediation in the fall of 2003.

10 Did you attend that mediation?

11 A. That was in 2007.

12 Q. I asked the wrong question.

13 In 2007, did you attend a mediation in 2007?

14 A. Yes.

15 Q. And Chevron had asked for that mediation?

16 A. I don't know. I wasn't involved in the initial mediation.
17 That was just a technical meeting.

18 Q. I'm sorry, it was a technical meeting or it was a
19 mediation?

20 A. Well, there was a mediation. But as a scientist I was not
21 involved in -- I had no idea how the mediation was set up or
22 any of the legal issues other than just what I was told by
23 Mr. Veiga.

24 Q. Did you have an understanding whether this was a voluntary
25 mediation or a court ordered mediation?

DAHLCH5

McMillen - cross

1 MS. NEUMAN: Objection, relevance.

2 THE COURT: Sustained.

3 MS. LITTLEPAGE: Judge, may I proffer the question and
4 answer then because I do believe that the allegations in the
5 complaint repeatedly say that Mr. Donziger was putting Chevron
6 in a position where they felt that they were being extorted for
7 money, and voluntarily going to a mediation is inconsistent at
8 least on some level with that allegation.

9 THE COURT: I stand by the ruling.

10 Q. Ms. McMillen, for the Cabrera report, did you review the
11 Cabrera report in detail?

12 A. Are you referring to his April 1, 2008 report?

13 Q. Yes, ma'am.

14 A. Yes, I reviewed that.

15 Q. And were there several sections to the report?

16 A. Yes, there were. There were many anexos.

17 THE COURT: You're switching to another subject?

18 MS. LITTLEPAGE: I am.

19 THE COURT: We'll take a short break.

20 (Recess)

21 THE COURT: Okay. Let's continue.

22 MS. LITTLEPAGE: May I proceed?

23 THE COURT: Oh, yes, of course.

24 Q. Ms. McMillen, we were talking about the Cabrera report when
25 we took our break and you told us there were several sections

DAHLCH5

McMillen - cross

1 of the Cabrera report.

2 Was one of those sections data that Mr. Cabrera had
3 gathered from actual samples or inspections?

4 A. Yes. Anexo A contained all of the data sheets from the
5 laboratory.

6 Q. Was that the first time the parties saw the data or had it
7 been filed in the court before?

8 MS. NEUMAN: Objection, lacks foundation.

9 THE COURT: At least. Objection sustained.

10 Q. And what was the data that was attached as annex A?

11 THE COURT: I don't even understand the question. Are
12 you asking for each reading at each sample site of each
13 chemical? That would answer the question. Are you asking what
14 she understood Cabrera was representing it to be if indeed he
15 wrote it? You know, this could go on and on. You've got to be
16 a lot more specific.

17 And basically your problem is you've got a document,
18 it is either in evidence or it will be in evidence and it
19 speaks for itself.

20 Q. Ms. McMillen, was annex A lab reports or did it involve any
21 analysis or opinion?

22 THE COURT: It speaks for itself.

23 MS. LITTLEPAGE: Judge, it's not in evidence.

24 THE COURT: It will speak for itself, or are you
25 saying you're not going to offer it?

DAHLCH5

McMillen - cross

1 MS. LITTLEPAGE: Judge, we've offered the entire Lago
2 Agrio record.

3 THE COURT: Okay. Is there going to be any objection
4 to the Cabrera report insofar as offered simply for what it
5 says as opposed to the truth?

6 MR. MASTRO: No objection, your Honor.

7 THE COURT: What's the exhibit number of that?

8 MR. MASTRO: It's on our exhibit list.

9 MS. LITTLEPAGE: Defendant's Exhibit 605 is the entire
10 Lago Agrio record.

11 THE COURT: That's not what I asked. The Cabrera
12 report.

13 MR. MASTRO: Your Honor, we will pull that up and put
14 it on the record.

15 THE COURT: If it's necessary to have 216,000 pages in
16 this trial record, we'll do it. But we don't have to do that
17 for right now.

18 MS. LITTLEPAGE: May I proceed?

19 THE COURT: No. We're trying to get this resolved.

20 MS. NEUMAN: Plaintiff's Exhibit 310, the Cabrera
21 report with annexes, your Honor.

22 THE COURT: All right. Does everybody agree that
23 Plaintiff's Exhibit 310 is the Cabrera report with annexes,
24 complete with English translation, I assume; is that right?

25 MS. NEUMAN: I don't believe every annex is

DAHLCH5

McMillen - cross

1 translated.

2 THE COURT: Is the text translated as opposed to all
3 the annexes?

4 MS. NEUMAN: Yes, your Honor.

5 THE COURT: Everybody agree that's it? I mean we've
6 been hearing about the Cabrera report for three years. This
7 shouldn't be a toughy.

8 MS. LITTLEPAGE: I will agree.

9 THE COURT: Okay. Any objection to Plaintiff's 310
10 coming in subject to the provision of English translations of
11 whatever parts that have not yet been translated?

12 MS. LITTLEPAGE: No, sir.

13 THE COURT: All right. Plaintiff's Exhibit 310 is
14 received, not for the truth of the matter, but for the fact
15 that it was said.

16 (Plaintiff's Exhibit 310 received in evidence)

17 THE COURT: Now, it now speaks for itself. Now let's
18 move on.

19 Q. If you turn to your page 17, line 4 of your witness
20 statement.

21 A. Yes.

22 Q. And you indicate that you reviewed the Cabrera report the
23 evening it was filed.

24 Were you in Ecuador the day it was filed?

25 A. No, I was not.

DAHLCH5

McMillen - cross

1 Q. Did you receive a Spanish or an English -- did you receive
2 a Spanish version of the Cabrera report?

3 A. I received a Spanish version. I think this is the day
4 after it was filed. I don't believe I got a copy on April 1.

5 Q. The evening of April 2, would be what you are referring to
6 in line 1 of paragraph 35?

7 A. That's my recollection, yes.

8 Q. And, I'm sorry, I didn't understand. Did you receive a
9 Spanish version or an English version?

10 A. Spanish.

11 Q. Do you read Spanish?

12 A. I read technical Spanish fairly well because I spent so
13 much time reading the reports as submitted.

14 Q. And you indicated that from your review of the reports the
15 evening after it was filed that you noticed -- let me ask you
16 this -- inconsistencies; would that be fair?

17 A. Yes. There were internal inconsistencies.

18 Q. And so would it be fair to say you did not rely on the
19 Cabrera report from the first time you saw it the night after
20 it was filed?

21 MS. NEUMAN: Objection, vague.

22 THE COURT: Sustained. For what purpose?

23 MS. LITTLEPAGE: Judge, I believe an element of the
24 claim being made is detrimental reliance, and I think I'm
25 entitled to ask the witnesses whether they relied on the things

DAHLCH5

McMillen - cross

1 that they say were fraudulent because that's one of the
2 elements.

3 THE COURT: My recollection is I dismissed all of
4 Chevron's fraud claims on the ground that Chevron couldn't
5 conceivably establish that Chevron relied to its detriment.
6 Did I not do that?

7 MR. MASTRO: Correct, your Honor. It's third party
8 fraud.

9 THE COURT: Right. Let's go on. So you're right,
10 absolutely. It's just that you won that point two years ago.
11 Q. If you turn to -- did you play any role in the preparation
12 of the Chevron motion requesting that the Lago Agrio court
13 disregard the Cabrera report?

14 MS. NEUMAN: Objection, vague as to which motion is
15 being referred to.

16 MS. LITTLEPAGE: Let me ask a better question.
17 Q. Did Chevron file motions in the Lago Agrio case asking the
18 Court to disregard the Cabrera report?

19 A. The only effort that I participated in was responding to
20 the technical issues of Mr. Cabrera's report and his subsequent
21 report, so I'm not sure what you mean.

22 Q. Did you review any filings by Chevron in the Lago Agrio
23 case concerning a request for the court to disregard the
24 Cabrera report?

25 A. I worked on the technical elements of Chevron's responses

DAHLCH5

McMillen - cross

1 or rebuttals to Mr. Cabrera.

2 Q. And okay. If you turn to tab 11, Plaintiff's Exhibit 400.
3 And this is not the full version. The full version is very
4 long, but it's already in evidence.

5 Do you recognize the first page as the first page of
6 the order, the verdict from Judge Zambrano issued February 14,
7 2011?

8 THE COURT: What difference does it make? Everybody
9 agrees that's what it is. So we're going to take testimony
10 about whether that's what it is?

11 MS. LITTLEPAGE: Okay, Judge.

12 Q. Did you review Judge Zambrano's verdict when it was issued
13 on February 14, 2011?

14 A. I read the judgment and evaluated, studied the technical
15 parts of that judgment.

16 Q. And if you turn to page 31 of your direct statement, the
17 last line, line 23.

18 A. I'm sorry, did you say page 31?

19 Q. I did. Looking at the sentence that says I noted that the
20 Ecuadorian judgment purported to exclude harm caused by
21 Petroecuador -- it goes on to the next page. Are you with me?

22 A. Yes.

23 Q. And is that notation based on your review of the Zambrano
24 verdict of February 14, 2011?

25 A. It's based on my review of the judgment that was filed

DAHLCH5

McMillen - cross

1 February 14, yes.

2 Q. And what do you mean by exclude harm caused by
3 Petroecuador?

4 A. I guess I'm not sure how else to say it other than what it
5 says, that no impacts or harm cause by Petroecuador were
6 included in the judgment.

7 Q. And in the judgment, did Chevron's motion for the court to
8 disregard the Cabrera report get granted?

9 MS. NEUMAN: Objection, calls for a legal conclusion.

10 THE COURT: Sustained.

11 Q. If you turn to tab 11, it's second page of tab 11 which is
12 Plaintiff's 400.

13 Do you know, Ms. McMillen, if Chevron's motion to
14 disregard the Cabrera report was granted?

15 MS. NEUMAN: Objection, your Honor, the judgment --

16 THE COURT: Sustained.

17 Q. Did you assist the Chevron lawyers in filing any motions
18 after the verdict was entered on the issue of whether the
19 Cabrera report had been considered or disregarded in the
20 verdict?

21 A. I only assist the legal team in terms of technical
22 questions. Specific motions, I really am not familiar with
23 that and really can't answer. It's really a legal question
24 that I am not familiar with the various filings.

25 Q. Did you assist on the technical issues of any legal

DAHLCHE5

McMillen - cross

1 document that was being prepared by Chevron for filing after
2 February 14, 2011 concerning the Cabrera report?

3 A. I'm sorry. I'm not following the question. Could you
4 repeat it again, please.

5 Q. Sure. Do you recall working on the technical issues of any
6 legal briefing or motion filed by Chevron after the
7 February 14, 2011 verdict concerning Mr. Cabrera?

8 THE COURT: I'm sorry, was there a judgment concerning
9 Mr. Cabrera?

10 Q. Concerning Mr. Cabrera's report.

11 A. I'm sure I assisted the legal team in addressing any
12 scientific issues, but I'm still struggling to really
13 understand what you're asking me. I'm sorry.

14 Q. If you turn to tab 13, Plaintiff's Exhibit 429. Do you
15 recognize that as a clarification that was issued by Judge
16 Zambrano on March 4, 2011?

17 THE COURT: Is there any dispute that this is a
18 decision issued on that date over Mr. Zambrano's name?

19 MS. NEUMAN: No, your Honor.

20 THE COURT: Any objection to its being received on
21 that basis, not for the truth but for the fact of what it is?

22 MS. NEUMAN: No, your Honor.

23 THE COURT: Plaintiff's 429 is received.

24 (Plaintiff's Exhibit 429 received in evidence)

25 THE COURT: I take it the defense doesn't object,

DAHLCH5

McMillen - cross

1 right?

2 MS. LITTLEPAGE: No, sir.

3 THE COURT: Okay. Fine.

4 Q. Between February 14, 2011, and March 4, 2011, did you
5 assist the Chevron team in addressing an issue of the number of
6 pits that was discussed in the 2/14/11 verdict?

7 A. I did assist in determining the origin of the 880 pits
8 that's mentioned in the judgment.

9 Q. And what did Judge Zambrano explain that issue in PX429,
10 his clarification?

11 THE COURT: Sustained. It speaks for itself.

12 Q. Did you assist the Chevron team in any of the technical, on
13 the technical side for any of the motions filed after Judge
14 Zambrano's clarification of March 4, 2011 in the appeal
15 process?

16 A. I probably did, but I don't have specific recollection.

17 Q. If you turn to tab 14, Plaintiff's Exhibit 430.

18 MS. LITTLEPAGE: Judge, move to admit Plaintiff's
19 Exhibit 430, the January 3, 2012 decision of the appellate
20 court.

21 THE COURT: Any objection?

22 MS. NEUMAN: Your Honor, I do not if it's not coming
23 in for the truth. But as you know, defendants contend they're
24 declining to assert the defense of collateral estoppel. So if
25 they're putting the appellate decision in for the truth of any

DAHLCH5

McMillen - cross

1 matter asserted therein, saying that it shows the judgment is
2 an enforceable judgment, we object to that, unless they've
3 changed their position. I don't see the relevance of the
4 appellate judgment otherwise.

5 MS. FRIEDMAN: Your Honor, may I address that?

6 THE COURT: Yeah.

7 MS. FRIEDMAN: Your Honor, I would want to make clear
8 we are not asking for collateral estoppel, that is, this Court
9 is bound by factual findings in that record. We are later
10 going to ask the Court to take the verdict, the clarification,
11 the appellate ruling, and the clarification of the appellate
12 ruling, we are going to ask that you take them for the truth,
13 but we don't have to deal with that today.

14 But when we do that, we're not going to be asking the
15 Court to rule as a matter of collateral estoppel that it's
16 bound by those findings, but we are going to ask that the Court
17 take it as evidence for the truth, not just for the fact that
18 the judgments were issued.

19 THE COURT: One lawyer per -- well, they've already
20 violated. What do you want to say, Mr. Mastro?

21 MR. MASTRO: That's remarkable slight of hand, your
22 Honor. You should take it for the truth and credit it and be
23 bound by it, but they're not offering it as collateral
24 estoppel. I think that this is how this has been played in
25 this litigation. They shouldn't come in for the truth of the

DAHLCHE5

McMillen - cross

1 matters asserted.

2 THE COURT: Look, there's no dispute about what it is,
3 right?

4 MR. MASTRO: There's no dispute about what it is, your
5 Honor.

6 THE COURT: All right. So it's received not for the
7 truth of the matters asserted.

8 (Plaintiff's Exhibit 430 received in evidence)

9 THE COURT: If, as and when it's ever offered on that
10 basis, I'll deal with it then, that is to say, if it's ever
11 offered for the truth. Even if it came in, it would come in
12 for the truth, I suppose, but in no way as conclusive, I
13 imagine.

14 MS. FRIEDMAN: That would be our position, your Honor.

15 THE COURT: Okay. Let's go ahead.

16 MS. LITTLEPAGE: Judge, while we're on this issue, if
17 you turn to tab 15, Plaintiff's Exhibit 431, it's the appellate
18 clarification issued on January 13, 2012. We would move for
19 the admission of Plaintiff's Exhibit 431.

20 THE COURT: Any reason why it shouldn't be the same
21 ruling?

22 MS. NEUMAN: No, your Honor. On the same basis we
23 have no objection.

24 THE COURT: It's received on that limited basis.

25 (Plaintiff's Exhibit 431 received in evidence)

DAHLCH5

McMillen - cross

1 Q. I want to go back to the pit count in the original verdict.
2 Did you review the Cabrera report for the number of pits that
3 are identified in the Cabrera report?

4 A. I reviewed the number of pits that are identified in the
5 Cabrera report, yes.

6 Q. And does the Cabrera report identify 916 pits?

7 A. In some parts it says 916, and in other parts it says 917.

8 Q. And did the verdict refer to 880 pits?

9 THE COURT: The verdict is now getting to be a
10 problem.

11 MS. LITTLEPAGE: I'll move on.

12 Q. If you turn to your declaration, which is tab 1, page 5,
13 line 8 through 9.

14 A. The page number again?

15 Q. Five.

16 A. Yes.

17 Q. And you indicate that the Ecuadorian plaintiffs blocked
18 Chevron's attempts to have a court ordered inspection of the
19 HAVOC lab.

20 The HAVOC lab was the lab used by the plaintiffs to
21 evaluate some of their samples; is that correct?

22 A. The plaintiffs had about 75 percent of their samples
23 analyzed by the HAVOC lab, yes.

24 Q. And Chevron had asked the court to order an inspection of
25 that lab; is that fair?

DAHLCH5

McMillen - cross

1 A. Chevron's legal team, yes, asked for a judicial inspection
2 of the laboratory.

3 Q. And the plaintiffs' team filed a response and argued
4 against that inspection?

5 THE COURT: Look, again, are you asking what the
6 witness knows of her own personal knowledge or are you
7 basically asking for what was said around the water cooler at
8 Chevron?

9 MS. LITTLEPAGE: I'm asking for the basis of her
10 opinion in this declaration that Mr. Donziger and his group
11 blocked Chevron's attempt to have a court ordered inspection,
12 when in fact it was the court ruled against them and granted
13 what would be essentially a motion to quash.

14 THE COURT: Would you like now to be sworn and testify
15 as to the factual representations you're making to me?

16 Look, the whole point, of course, is, once again, the
17 object of this exercise is to get information from people who
18 are competent to give it to you, personal knowledge as a rule.
19 The reason we've had problems all day is because that has not
20 been your uniform mode of examination.

21 Presumably, whatever happened as a matter of procedure
22 down there is a matter of record. Would I be right in that?

23 MS. LITTLEPAGE: I actually don't know if this would
24 be in the Lago Agrio record, Judge, because this was the
25 ancillary action, sort of like a subpoena action, in Quito.

DAHLCH5

McMillen - cross

1 THE COURT: And is the suggestion that Ms. McMillen
2 was there?

3 MS. LITTLEPAGE: I'm trying to test the basis of her
4 representation in her written statement about that fact.

5 THE COURT: That's fair enough. Go ahead.

6 Q. Ms. McMillen, do you have any factual knowledge as to what
7 happened in the proceedings that dealt with the inspection of
8 the HAVOC lab?

9 A. I saw in the movie Crude, in part of that movie
10 Mr. Donziger and Mr. Yanza visits the judge asking for the
11 judicial inspection to be suspended.

12 I read Mr. Donziger's documents that refer that it
13 would be a disaster for the HAVOC lab to be inspected.

14 And each time that we scheduled a judicial inspection,
15 I ask a chemist to assist the legal team and they would report
16 to me that that same day that they had not been able to do
17 their work because they could not enter the laboratory.

18 Q. If you turn to tab 16, Defendant's Exhibit 1417, do you
19 recognize those photographs as still shots from the Crude
20 movie, the movie Crude, that you were just discussing?

21 A. I'm not certain if they're from the movie or from the
22 outtakes, but I have seen these images before.

23 Q. And do you -- is this the judicial hearing that you were
24 referencing discussing the inspection of the lab, of HAVOC lab?

25 A. I don't know that there was a hearing. I saw Mr. Donziger

DAHLCH5

McMillen - cross

1 go into the office and speak with the judge without our
2 attorneys present.

3 Q. Well, if you turn to the last photograph, do you recognize
4 that as being inside the judge's office with Mr. Donziger and
5 Mr. Ponce, and can you identify the person that's in that
6 picture?

7 A. That's one of the Chevron attorneys on the Quito legal
8 team.

9 Q. Is that Mr. Callejas?

10 A. No, it's not.

11 Q. Who is it? I'm asking. I thought it was Callejas, but who
12 is it?

13 A. I'm having a mental block.

14 Q. Is it Diego Reyes -- Larrea, Diego Larrea?

15 A. Diego Larrea, that's right.

16 Q. And does Mr. Larrea represent Chevron?

17 A. Yes, he does.

18 Q. In the Ecuadorian matter?

19 A. Yes.

20 MS. NEUMAN: For the record, your Honor, I think
21 counsel misidentified Luis Yanza as Mr. Ponce in the last page
22 of this exhibit.

23 THE COURT: Well, you're not going to be a witness any
24 more than your adversary is.

25 MS. LITTLEPAGE: Let me ask a better question.

DAHLCH5

McMillen - cross

1 Q. Is the photograph No. 3 two representatives from the
2 plaintiff's group speaking with the judge?

3 THE COURT: If you know.

4 A. The third one I see the judge, I see Mr. Yanza and I see
5 Ponce.

6 Q. Mr. Ponce. And the fourth one would be the lawyer for
7 Chevron?

8 A. Yes.

9 MS. LITTLEPAGE: Judge, we move to admit Defendant's
10 Exhibit 1417.

11 MS. NEUMAN: No objection.

12 THE COURT: Received.

13 (Defendant's Exhibit 1417 received in evidence)

14 Q. And was it your understanding that the court ordered -- the
15 court did not order an inspection of the HAVOC lab?

16 A. It was my understanding that the judge said he was going to
17 suspend the inspection that day.

18 Q. And can you tell me which labs Chevron used for their
19 samples?

20 A. Yes. We used Severn-Trent laboratories in Houston and New
21 Field's lab in Massachusetts.

22 Q. And did Severn-Trent also have a office in Ecuador?

23 A. They were constructing a laboratory in Ecuador, but it was
24 never used for the judicial inspection analysis.

25 Q. And was a man called Mr. Borja, B-O-R-J-A, an employee of

DAHLCHE5

McMillen - cross

1 Severn-Trent labs in Ecuador?

2 A. Mr. Diego Borja, I'm not certain if he was an employee of
3 STL or not.

4 Q. Do you know if he was a employee of Texaco or Chevron,
5 Texaco or Chevron?

6 A. He was not a Chevron employee.

7 Q. Had he been either a Texaco or Chevron employee?

8 A. Not to my knowledge.

9 Q. Was he a contractor of Texaco or Chevron?

10 MS. NEUMAN: Objection, lacks foundation. The witness
11 has never even worked for Texaco.

12 THE COURT: Ms. McMillen, did you ever work for
13 Texaco?

14 THE WITNESS: No, I did not.

15 THE COURT: Do you have personal knowledge of whether
16 this individual ever worked for Texaco?

17 THE WITNESS: No, I do not.

18 THE COURT: Do you have personal knowledge of whether
19 he ever worked for Chevron?

20 THE WITNESS: I know that he helped with shipping and
21 receiving, but I'm not sure exactly the employment arrangement.

22 THE COURT: Shipping and receiving what?

23 THE WITNESS: Of equipment and samples.

24 THE COURT: And do you know for whom he did that, that
25 is to say, who his employer was when he did that?

DAHLCH5

McMillen - cross

1 THE WITNESS: I'm not certain what the company was
2 that he worked for.

3 THE COURT: Let's go.

4 Q. But was the company that he worked for working for Chevron
5 doing shipping and receiving of equipment?

6 MS. NEUMAN: Objection, lacks foundation.

7 THE COURT: Sustained. You have to lay a foundation.

8 Q. Do you know if the company that Mr. Borja worked for was
9 contracted by Chevron to do shipping and receiving of equipment
10 and supplies?

11 MS. NEUMAN: Objection, lacks foundation. The witness
12 already testified she didn't know which company he worked for.

13 THE COURT: I think that's right, isn't it,
14 Ms. Littlepage?

15 MS. LITTLEPAGE: Yes. I'm not asking for the name of
16 the company. I'm asking if she knows the relationship between
17 that company which name she's forgotten and Chevron.

18 THE COURT: So if he works for DHL and the answer is
19 yes, what have you got? He works for the U.S. Postal Service
20 and you get a yes, what have you got?

21 Q. The company that you do not recall the name, do you know
22 what role it played in working with Chevron, if any?

23 A. No, I guess I don't. I know that he did shipping and
24 receiving. I don't remember the name of the company. I never
25 saw any -- I don't know.

DAH8CHE6

McMillen - cross

1 Q. Did you ever meet Mr. Diego Borja?

2 A. Yes, I did.

3 Q. How many times did you meet Mr. Borja?

4 A. I think I recall three occasions.

5 Q. What were those occasions?

6 A. I met him right before the judicial inspections began in
7 2004 to talk about how we were going to be able to get the
8 sample containers shipped into Ecuador, kind of the logistics
9 of shipping and receiving, how we were going to make sure that
10 we could get samples to the United States within the holding
11 time, that kind of thing. And, basically, I reviewed the area
12 where the samples would be brought to Quito and then packaged
13 for -- putting coolers for the flight to the United States.

14 Q. Was Mr. Borja responsible for that packing and shipping
15 process for the Chevron samples?

16 A. I know he was a part of that process.

17 Q. What about the other two occasions?

18 A. The other two occasions were in the Oriente, in Lago Agrio.

19 Q. What was the occasion of meeting Mr. Borja then?

20 A. I believe that he was there during some judicial
21 inspections, and he was there and I remember speaking with him,
22 saying hi. I believe he was probably there to assist with the
23 shipment of the samples to Quito.

24 Q. The assistance would be for Chevron's shipment of the
25 samples to Quito?

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McMillen - cross

1 A. Or for the judicial inspection expert, because they were
2 the expert samples.

3 Q. Was Chevron responsible for shipping the judicial expert
4 samples to Quito?

5 A. I believe Chevron paid for that.

6 Q. Did Chevron also pay for the judicial inspection expert
7 samples to be analyzed?

8 A. I believe so.

9 Q. Did Chevron select the lab that the judicial inspection
10 expert samples were analyzed?

11 A. The SDL lab had been selected before I started working on
12 the case, and I suggested new fields for some specialized
13 analytical, but the judicial inspection expert would write on
14 their chain of custody which laboratory which samples should go
15 to.

16 THE COURT: When you are referring to judicial
17 inspection experts, are you speaking of those nominated by
18 Chevron, those nominated by the other side, or the court
19 appointed nonparty nominated experts, all of them or some of
20 them? What are you talking about?

21 THE WITNESS: I know for the samples taken by the
22 Chevron nominated experts, that they were shipped under chain
23 of custody, and they would identify all the chain of custody,
24 what the samples were to be analyzed for and which laboratories
25 were to be used. And I believe many of the times the

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McMillen - cross

1 plaintiffs nominated experts also did that.

2 THE COURT: You said earlier that you believed Chevron
3 paid for shipping the judicial experts' samples. Is that true
4 for samples taken by the Chevron nominated judicial inspection
5 experts, the other side's nominated judicial inspection
6 experts, the court appointed nonparty nominated experts, or
7 some or all of them?

8 THE WITNESS: To my knowledge, Chevron only paid for
9 the Chevron nominated expert samples to go to the laboratory.

10 THE COURT: Now, is your answer the same with respect
11 to the selection of the laboratory at which the samples were
12 analyzed?

13 THE WITNESS: I'm sorry?

14 THE COURT: You were asked whether Chevron selected
15 the lab that the judicial inspection expert samples were
16 analyzed at. And you responded that SDL had been selected
17 before you started working, that you suggested new fields for
18 certain special work, and there was chain of custody and so
19 forth. When you said Chevron paid for the analysis of the
20 judicial expert samples, which experts were you talking about?

21 THE WITNESS: I meant the Chevron nominated experts.

22 THE COURT: Let's continue.

23 BY MS. LITTLEPAGE:

24 Q. In your written statement, you discuss reviewing crude
25 outtakes and the movie *Crude* concerning the visit of President

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McMillen - cross

1 Correa to the Oriente. Do you recall seeing those images?

2 A. Yes.

3 Q. Were you in the Oriente the day that President Correa went
4 to the concession area to view the area?

5 A. No, I was not.

6 Q. If you turn to tab 18, Defendants' Exhibit 1420, do you
7 recognize those images as images that you saw of President
8 Correa in the Oriente?

9 MS. NEUMAN: Objection. Irrelevant.

10 THE COURT: Sustained.

11 Q. Ms. McMillen, this morning you indicated that you had made
12 two changes to your declaration -- three changes, two of which
13 dealt with this particular issue, President Correa going to the
14 Oriente to inspect. Do you recall that?

15 MS. NEUMAN: Objection. It misstates the witness's
16 testimony.

17 THE COURT: I would say so. Sustained.

18 You did make two changes in paragraph 71, Ms.
19 McMillen, and they referred to a sentence in which you made a
20 the statement about President Correa going to Lago Agrio. That
21 is correct, is it not?

22 THE WITNESS: Yes.

23 THE COURT: Next question.

24 Q. Were there people of your technical team, Chevron's
25 technical team, present in the Oriente the day that President

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McMillen - cross

1 Correa went to inspect the concession area?

2 A. I would like to clarify that in my statement I am talking
3 about a visit that just happened I think two weeks ago, not
4 anything that happened in the outtakes.

5 Q. OK. Were you present when President Correa visited the
6 Oriente as shown in the *Crude* movie on the outtakes?

7 A. No, I was not.

8 Q. Were there people from Chevron technical team present the
9 day President Correa went to the concession area?

10 MS. NEUMAN: Objection.

11 Q. In the images captured on the movie *Crude*?

12 MS. NEUMAN: Objection. Lacks foundation.

13 THE COURT: All she asked -- OK.

14 Do you know whether there were any Chevron technical
15 team there that day some years ago?

16 THE WITNESS: Not to my knowledge, there weren't.

17 Q. Were there Chevron people present in the last couple of
18 weeks when President Correa went back to the concession area?

19 A. No.

20 Q. On page 33 of your declaration, line 9, it's in paragraph
21 70. It's the first couple of sentences of paragraph 70. Do
22 you see that, Ms. McMillen?

23 A. Yes.

24 Q. You discuss some Ecuadorian government funded studies. Do
25 you see that?

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McMillen - cross

1 A. Yes.

2 Q. Can you describe for the Court what types of studies the
3 Ecuadorian government had funded on issues relating to the
4 concession area?

5 A. In paragraph 70 here?

6 Q. Yes, ma'am.

7 A. Well, I found a copy of the contract, so part of the
8 wording from that contract is here. And, really, all I know is
9 what is in the wording of the contract.

10 Q. You have no personal knowledge of the studies?

11 THE COURT: If indeed they were studies.

12 Q. Or if they were even studies?

13 A. I know we received documents from the Ministry of
14 Environment documenting the work that was done and who did it.

15 Q. Do you have any personal knowledge of the type or scope of
16 the studies that were sponsored by the Ecuadorian government in
17 the concession area?

18 A. I know what was written in the documents.

19 Q. So what types of studies were done in the concession area
20 based on your understanding or knowledge of that topic?

21 A. Just as it says. There was an environmental liabilities
22 information system and information about the
23 socio-environmental problems.

24 Q. Have you ever reviewed any of the underlying data for those
25 government sponsored studies in the concession area?

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McMillen - cross

1 THE COURT: If they were studies and if there is any
2 underlying data.

3 A. I have seen some documents, but I haven't reviewed those
4 recently.

5 Q. Did you review documents relating to the two specific
6 studies that you reference in your written statement in a way
7 that you would have any details about those studies?

8 THE COURT: You know, you love the word "studies" in
9 this question, but I don't know where it's coming from.

10 Q. I will call it data. I think that's the word used in the
11 declaration. Do you have any personal knowledge or detailed
12 information about the data collected in the two items
13 referenced in your written statement?

14 A. Well, just as it said, I reviewed the documents, and I
15 noted that some of the people on that contract in those
16 documents were some of the same people that were listed in the
17 Anexo V of the Cabrera report as people that were working on
18 Mr. Cabrera's team.

19 Q. If you turn to page 2, line 9 of your written statement,
20 it's paragraph 3, you discuss unfounded cost estimates. Do you
21 see that in paragraph 3?

22 A. Yes.

23 Q. Did Chevron ever do a cost estimate analysis of any of the
24 issues related to the Ecuadorian case?

25 MS. NEUMAN: Objection. Relevance.

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McMillen - cross

1 THE COURT: Sustained.

2 MS. LITTLEPAGE: Judge, may I proffer? I believe that
3 if a witness makes a statement that the cost estimates of the
4 plaintiffs are unfounded, that I am allowed to ask if Chevron
5 had any alternate cost estimates that might be the same,
6 similar or different.

7 THE COURT: So your proffer is in fact an argument?

8 MS. LITTLEPAGE: My proffer is a proffer with some
9 argument, small argument.

10 THE COURT: Which is the proffer part?

11 MS. LITTLEPAGE: I would like to ask the witness the
12 questions, and if the Court doesn't take it as the fact finder,
13 for the appellate record.

14 THE COURT: No.

15 A cost estimate may be unfounded because it's made up.
16 It might even be a scientific wild-assed guess, to use a
17 technical term that I learned this morning.

18 Q. If you turn to tab 20, Defendants' Exhibit 729, which has
19 already been received into evidence. Do you recognize this
20 document?

21 A. Yes.

22 Q. Is it, in fact, an e-mail between you and Mr. Russell on
23 November 13, 2005?

24 A. On this page it's an e-mail November 12 and November 13.

25 Q. In this e-mail, did Mr. Russell offer --

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1 THE COURT: Sustained. It says what it says. Next
2 question.

3 Q. Did Chevron ever take Mr. Russell up on his offer to do a
4 cost estimate on the issues relating to the Ecuadorian case?

5 A. No.

6 Q. In your direct testimony you discuss being actually present
7 at some of the judicial inspections. How many judicial
8 inspections did you personally attend?

9 A. I attended 14.

10 Q. At those judicial inspections, was the judge present?

11 A. Yes.

12 Q. Did the judge take testimony at those judicial inspections
13 from people who lived in that area?

14 MS. NEUMAN: Objection. The record speaks for itself.

15 THE COURT: How is that clear? We are now talking
16 about what taking testimony means under Ecuadorian law, right,
17 and what it means to take testimony under Ecuadorian law. And
18 you're presupposing something, Ms. Neuman, and so, too, is your
19 adversary. The question is indeterminable.

20 What do you mean, counsel? Do you mean did the judge
21 cause any persons to be sworn to either permit the lawyers to
22 ask the questions, or for the judge to ask the questions, and
23 for a stenographer to take down what was said, did that ever
24 happen at one of these judicial inspections?

25 MS. LITTLEPAGE: Yes, except for the stenographer. I

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McMillen - cross

1 believe they just used a recording device.

2 THE COURT: You get to testify on Monday. I am asking
3 Ms. McMillen.

4 MS. LITTLEPAGE: I don't know if you wanted me to ask
5 her.

6 THE COURT: I am asking Ms. McMillen.

7 THE WITNESS: I saw during the judicial inspections
8 that sometimes local people would speak, but I don't recall
9 that they were sworn in. They might have been. I don't know.

10 THE COURT: Did you see any stenographers writing down
11 what they said?

12 THE WITNESS: The court secretary was there, but I
13 don't think she was a stenographer.

14 THE COURT: We will do a lot better with asking what
15 happened than trying to package it in little packages with all
16 sorts of legal assumptions.

17 Let's go on, Ms. Littlepage.

18 BY MS. LITTLEPAGE:

19 Q. Ms. McMillen, did you observe that there was a recording
20 device at the judicial inspections that recorded whatever local
21 people would speak?

22 THE COURT: Did you observe whether there was a
23 recording device at the judicial inspections on any occasion?

24 THE WITNESS: Yes.

25 Q. Did you review the documents created out of those

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McMillen - cross

1 recordings?

2 THE COURT: If any were.

3 Q. If any were?

4 THE COURT: And if any recording device was ever
5 turned on and made any recordings.

6 A. There were recordings made. It was my understanding that
7 the attorneys for each side met with the court secretary and
8 then wrote down what happened during the judicial inspection
9 and it would be -- it was what they called a Judicial
10 Inspection Acta.

11 Q. Did both sides get input into the acta?

12 A. I wasn't present when that was done. That was something
13 that the legal team did so I am not comfortable answering
14 exactly how that came about.

15 Q. Did you ever review any actas?

16 A. I have read a few of them.

17 Q. Do they describe local people speaking?

18 MS. NEUMAN: Objection. Actas speak for themselves,
19 your Honor.

20 THE COURT: I will take that as a best evidence
21 objection and sustain it.

22 Q. Did you observe Chevron lawyers asking questions of the
23 local people who might speak at the judicial inspections, if
24 any?

25 A. Yes, I think I did see that at at least one judicial

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McMillen - cross

1 inspection.

2 Q. Did you see lawyers from the plaintiffs' side asking
3 questions of local people, if any, at the judicial inspections?

4 A. I don't remember seeing that.

5 Q. Did you observe the judge asking questions of local people,
6 if any, at any of the judicial inspections?

7 A. I know people spoke, but I really don't remember if the
8 judge asked them specific questions or not.

9 Q. In your written statement, you note that the Ecuadorian
10 plaintiffs succeeded in canceling the judicial inspections.
11 What do you mean by that phrase?

12 Let me ask another question. Did the plaintiffs'
13 group file a motion or a pleading to stop the judicial
14 inspections, if you know?

15 THE COURT: We are calling for hearsay here, is that
16 the objective?

17 MS. LITTLEPAGE: No, Judge. I think I am calling for
18 her knowledge of an actual event.

19 THE COURT: Was Abraham Lincoln elected the 16th
20 president of the United States? Now, that's calling for
21 hearsay about an actual event, right?

22 MS. LITTLEPAGE: It's also like what is your name?
23 Obviously, somebody had to tell them my name at some point to
24 know what my name is.

25 THE COURT: So if you ask somebody who was in

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1 Cleveland yesterday whether the light was green when there was
2 an accident on First Avenue, that's calling for an event. And
3 on your theory, the person who was in Cleveland gets to testify
4 about whether the light was green. Isn't that the logic of
5 your position?

6 MS. LITTLEPAGE: No, sir. I believe that if a witness
7 in a direct testimony states that the plaintiffs succeeded in
8 canceling the judicial inspections, I am allowed to ask the
9 basis of that -- not opinion because she's a fact witness, but
10 the basis of that statement.

11 THE COURT: We agree with that. Go right ahead.
12 Q. Would you agree with me that the canceling of the judicial
13 inspection came from a court order?

14 THE COURT: I thought the question you were going to
15 ask was what the basis for her statement was.

16 Q. What is the basis of that statement?

17 A. I know that the sites that the other side asked to have
18 judicial inspections of, that those judicial inspections never
19 happened.

20 Q. Did they not happen because of a court order?

21 A. I believe so.

22 Q. Did you play any role on the technical side of any of the
23 briefing or motions filed by Chevron on the issue of a request
24 to cancel the judicial inspections made by the plaintiffs?

25 A. I remember I discussed it with the legal team. I don't

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1 believe I had any direct role in writing any motions.

2 Q. Did you review any orders from the court relating to
3 canceling the judicial inspections?

4 A. I think I have seen it, but it wasn't typically my role to
5 review legal orders.

6 Q. When you were at judicial inspections, did the judges also
7 accept legal argument during the judicial inspections, did you
8 observe that?

9 A. I observed the attorneys for each side speaking.

10 Q. Did you observe attorneys from either side providing
11 additional materials or documents to the judges during the
12 judicial inspections?

13 A. Sometimes the attorneys would have what I would
14 characterize as visual aids, so they would have maps, aerial
15 photographs that were blown up, just like an exhibit I would
16 guess would be in the U.S.

17 Q. Did you observe, other than the visual aids, lawyers from
18 either party providing documents to the judge that the judge
19 took away from the judicial inspection, if any?

20 A. I don't recall if there was sharing of documents per se.

21 Q. Did you play any role in the creation of visual aids or
22 materials that were used at judicial inspections?

23 MS. NEUMAN: Objection. Relevance.

24 THE COURT: Sustained.

25 MS. LITTLEPAGE: Judge, may I be heard?

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McMillen - cross

1 THE COURT: Sure.

2 MS. LITTLEPAGE: There is an allegation that is in Ms.
3 McMillen's written statement in the amended complaint that
4 there is no ability to recognize or count pits based on aerial
5 photographs. And aerial photographs were used at judicial
6 inspections, specifically to discuss with the judge the number
7 of pits that occurred at that site. And so I would like to --

8 THE COURT: Why don't you ask the witness what she
9 knows because she observed it as opposed to your testifying?

10 MS. LITTLEPAGE: I apologize, Judge. I thought I was
11 leading, but I will ask an open-ended question.

12 Q. What did you observe in the judicial inspections -- let me
13 ask a slightly leading question.

14 THE COURT: She said a little while ago that sometimes
15 the attorneys would have had what I would characterize as
16 visual aids, so they would have maps, aerial photographs that
17 were blown up, just like an exhibit I would guess would be in
18 the U.S.

19 Now, you may proceed from that.

20 Q. Did you observe a discussion at the judicial inspections
21 about the location of pits based on aerial photographs?

22 A. At the judicial inspections, they would show the maps or
23 aerial photographs for that particular site, and those were
24 always entered into the court record.

25 Q. Did Chevron use aerial photographs to identify the location

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McMillen - cross

1 of pits?

2 A. We would never use aerial photographs alone to identify
3 pits. The quality of the aerial photographs was very poor for
4 many of the years and they were in black and white. It's
5 really impossible to accurately determine pit locations based
6 on aerial photographs.

7 Q. Would aerial photographs be one of the sources of
8 information Chevron would use to look at the location of pits?

9 A. The experts that we nominated were provided with aerial
10 photographs for their information and for their assessment of
11 the site.

12 Q. If you turn to tab 22, Defendants' Exhibit 591.

13 A. Yes.

14 Q. Do you recognize this as a Chevron document called a
15 judicial inspection playbook?

16 A. Yes.

17 MS. LITTLEPAGE: We move to admit Defendants' Exhibit
18 591.

19 MS. NEUMAN: Objection. Relevance.

20 THE COURT: What is the relevance?

21 MS. LITTLEPAGE: Judge, this judicial inspection
22 playbook was put together to help the technical team prepare
23 for the judicial inspection that uses aerial photographs to
24 identify and actually mark different areas of the site
25 including pits.

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McMillen - cross

1 THE COURT: And therefore?

2 MS. LITTLEPAGE: Therefore, it is some evidence that
3 you can identify pits from aerial photographs.

4 THE COURT: It's for that purpose?

5 MS. LITTLEPAGE: Yes, sir.

6 MS. NEUMAN: No objection for that purpose.

7 THE COURT: Received for that limited purpose.

8 (Defendants' Exhibit 591 received in evidence)

9 Q. Ms. McMillen, when you were talking about judicial
10 inspections, did Chevron have a policy of pre-inspections?

11 A. The technical team for Chevron did conduct pre-inspections.

12 Q. Can you describe for the Court what a pre-inspection is?

13 A. It changed or varied over time and for different purposes.

14 I know I went on some pre-inspections before the judicial
15 inspections started because I had never been to Ecuador. I
16 never worked for Texaco. I hadn't seen any of the sites so we
17 went down and looked at several of the sites that were on the
18 judicial inspection requested site list.

19 Q. Would Chevron know ahead of time which was the next site
20 that was going to be visited by the judge?

21 A. I believe generally the court would order -- went in
22 basically the order that they were listed, unless there was
23 some reason not to, and I can't recall. And the judge would
24 notify the legal team ahead of time, he would schedule a
25 judicial inspection, and so there was some notice, some amount

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McMillen - cross

1 of time before we knew we would be there.

2 Q. If you turn to tab 23, Defendants' Exhibit 592.

3 Can you confirm that this is a document discussing
4 judicial inspections and a layout for judicial inspections?

5 THE COURT: Why don't we start with this.

6 Have you seen this before, Ms. McMillen?

7 THE WITNESS: I have seen this before.

8 THE COURT: All right. What is it?

9 THE WITNESS: This is a table for the summary of
10 sampling and testing program for the Sacha Norte production
11 station.

12 THE COURT: Prepared by who?

13 THE WITNESS: That was prepared by Bjorn Bjorkman, who
14 was a Chevron nominated judicial inspection expert.

15 MS. LITTLEPAGE: We move to admit Defendants' Exhibit
16 592.

17 MS. NEUMAN: No objection.

18 THE COURT: Received.

19 (Defendants' Exhibit 592 received in evidence)

20 Q. If you turn to page 2, under sampling activities, the box
21 which starts, "Collect soil samples at four or more locations
22 surrounding the site using locations that the PI team has shown
23 to be clean." Can you tell me what the PI team is?

24 A. It's an abbreviation for pre-inspection.

25 Q. When Chevron conducted the pre-inspections, would Chevron

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1 take samples of the site ahead of the time for the official
2 judicial inspection?

3 MS. NEUMAN: Objection. Relevance.

4 THE COURT: Overruled.

5 A. Sometimes.

6 Q. And would Chevron have those samples analyzed?

7 A. Yes.

8 Q. Would Chevron look to see if the samples showed impact
9 versus clean?

10 A. I would look at all the pre-inspection data and just look
11 at what the results were in general.

12 Q. Would some of the results show impact and some of the
13 results show clean?

14 MS. NEUMAN: Objection. Vague.

15 THE COURT: Overruled.

16 A. Sometimes there would be hydrocarbons that would be
17 detected in samples or other compounds detected in samples.

18 Q. Was Chevron's judicial inspection protocol, as reflected in
19 Defendants' 592, that there would be a collection of soil
20 samples at four or more locations surrounding the site, using
21 locations that the pre-inspection team had shown to be clean?

22 MS. NEUMAN: Objection. It misstates the evidence.

23 THE COURT: It's a question. Overruled.

24 A. This was Mr. Bjorkman's plan for this particular site, and
25 what he is referring to here is taking perimeter samples. And

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1 the reason I believe he was doing that was because of the
2 plaintiffs' claim that there was widespread contamination, and
3 so he was striving to delineate where there were impacts and
4 where there were not.

5 Q. The word clean would mean a sample that had been tested to
6 show no contamination or limited contamination?

7 Let me ask another question. Would clean mean no
8 contamination?

9 A. Mr. Bjorkman wrote this. I assume he probably means that
10 there was no or very little concentration of hydrocarbons
11 present.

12 Q. Was it Chevron's practice to use the pre-inspection data to
13 collect samples at sites during the judicial inspection that
14 Chevron already knew was clean from the pre-inspection?

15 A. Well, this document is specific to Sacha Norte 1. So this
16 document doesn't reflect what other nominated experts did at
17 different sites.

18 I'm sorry. I am trying to answer your question, but I
19 think your question is broader than this document perhaps.

20 Q. Yes. And then I was going to ask you a more specific
21 question about this document.

22 My broader question is, did Chevron have a protocol to
23 sample during the judicial inspection sites that Chevron
24 already knew was clean based on the pre-inspection analysis?

25 THE COURT: Chevron didn't pick the sites or did it?

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McMillen - cross

1 How were the sites determined?

2 I am asking the witness, not the lawyer.

3 THE WITNESS: The judicial inspection sites were
4 requested by both parties. So some were requested by Chevron
5 and some were requested by the Frente, and they would be well
6 sites or production sites.

7 Q. The sample locations, did the parties get to choose or at
8 least have some input into which locations in that site were
9 sampled during the judicial inspection?

10 A. The way I observed the judicial inspection process
11 occurring was that the attorneys for each side would discuss
12 with the judge or point out to the judge certain features of
13 the site, and would suggest sampling of certain features of the
14 site, and the judge would then order the experts to take
15 samples or he would kind of affirm the request from both legal
16 teams.

17 Q. Were the pre-inspections sample analysis submitted to the
18 court in Lago Agrio?

19 A. No. It was my understanding that they were inadmissible.

20 Q. Did the plaintiffs' group know that Chevron was conducting
21 pre-inspection sampling before the official judicial
22 inspections?

23 A. Yes.

24 Q. How did they know?

25 A. I know that we asked through the court for access to some

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1 sites, so that request would have been filed with the court.

2 And, also, I know that the technical teams would see each other
3 at sites.

4 Q. On the last column in the analysis column it indicates,
5 "Samples showing field evidence of contamination are sent to
6 new field for PAH analysis."

7 First of all, what is field evidence of contamination?

8 A. This is Mr. Bjorkman's document again, but I believe what
9 he would be referring to, if he saw visible evidence of
10 hydrocarbons, that it would be sent to new fields for this type
11 of analysis.

12 Q. Did Chevron take videotapes, video record the
13 pre-inspection process?

14 A. Sometimes.

15 Q. Were those video recordings submitted to the Lago Agrio
16 court?

17 A. I only recall one occasion where that was done, and that
18 was at Sacha 14 where there was a video showing Petroecuador
19 remediating a spill at the site.

20 Q. Other than the one occasion at Sacha 14, did Chevron submit
21 their pre-inspection video recordings to the court in Lago
22 Agrio?

23 A. Not to my knowledge.

24 Q. Were the pre-inspection videos provided to the plaintiffs'
25 group in the Lago Agrio case?

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McMillen - cross

1 MS. NEUMAN: Objection. Work product.

2 THE COURT: That's a question. It's a yes or no.
3 They either were or weren't. We are not talking about why.

4 THE WITNESS: Not to my knowledge.

5 THE COURT: How much longer with the witness, please?

6 MS. LITTLEPAGE: I am actually entering an area that I
7 need to approach the Court with. You told us there was some
8 issues that you wanted us to approach you on before we asked
9 questions, and I want to notify the Court of that now.

10 THE COURT: All right. And if that were to go
11 forward, how long? And if it were not, are you done?

12 MS. LITTLEPAGE: If it were not, I am done in about
13 five minutes. It's a distinct topic.

14 THE COURT: We will take a short break and I will see
15 counsel and the reporter in the robing room and we will deal
16 with this.

17 (In robing room)

18 THE COURT: What's up, Ms. Littlepage?

19 MS. LITTLEPAGE: There are two issues. I will
20 highlight them. The first is the pre-inspection videotapes.

21 THE COURT: Yes.

22 MS. LITTLEPAGE: The second is Chevron's lab results
23 from the judicial inspections.

24 Let me start with the first one. As I have
25 established with the witness, Chevron did pre-inspections,

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1 recorded themselves, and those results were not filed in the
2 Lago Agrio record. We received copies of about 50 -- is that
3 right? A box of tapes was left at Amazon Watch anonymously.
4 We notified Chevron that we had received this box of tapes,
5 because when Amazon Watch watched them, it was clearly
6 videotapes of Chevron sampling the sites before the official
7 judicial inspection.

8 Several months went by. We did not hear from Chevron.
9 My understanding is those tapes were filed in some court
10 proceeding, and the day that they were filed in the court
11 proceeding there was a --

12 THE COURT: Filed by who?

13 MS. LITTLEPAGE: By the plaintiffs.

14 THE COURT: By your side.

15 MS. LITTLEPAGE: Yes. They were filed by our side in
16 a legal proceeding.

17 THE COURT: In this country?

18 MS. LITTLEPAGE: In this country. That same day or
19 very contemporaneously Chevron asserted a privilege over the
20 videotapes as a work product privilege.

21 That issue has come to the court peripherally, as I
22 understand it from looking at the record. We asked for a
23 30(b)(6) witness to question the witness about the inspection
24 videos. The court allowed us to do that and Ms. McMillen was
25 put up as the 30(b)(6) witness. She did identify that they are

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1 in fact pre-inspection videos, that she had seen them, and they
2 were Chevron employees, she recognized the people. It is in
3 fact the Chevron tapes. But the privilege issue has -- the
4 special master did not allow any substantive questions on the
5 issue, and I don't believe this Court has ever ruled
6 specifically on the work product privilege of the issue. And
7 because Ms. McMillen is here and would be the person through
8 which I would put the pre-inspection videos into the record.

9 THE COURT: Did the special master rule on the
10 privilege issue?

11 MR. MASTRO: Yes, your Honor.

12 MS. LITTLEPAGE: From my review of the deposition,
13 that is not what happened. My review of the deposition is
14 Chevron took the position. The court had already ruled on the
15 privilege. The defendants took the position that the fact that
16 the court had allowed us the deposition indicated that there
17 was some discovery permitted on the issue. But we were allowed
18 to ask authentication questions so that we could at least prove
19 that they weren't just dummy tapes, they are in fact what they
20 are.

21 THE COURT: Did you ask questions going beyond
22 authentication, objections to which were sustained?

23 MS. LITTLEPAGE: Yes, sir.

24 THE COURT: Did you appeal it?

25 MS. LITTLEPAGE: That I don't know.

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1 MR. MASTRO: No, your Honor. I was actually at the
2 deposition.

3 MS. LITTLEPAGE: I think Mr. Gomez was there.

4 MR. DONZIGER: I was there too. This a little
5 challenging because counsel is so new. But my recollection is
6 we never actually showed the videos. Special Master Katz
7 determined that threshold issue, I believe, that it was work
8 product and prevented us from showing the videos.

9 We had copies of the videos. We had edited them down
10 to coherent short versions that we felt could be appropriately
11 shown to the witness for various reasons, and we were told we
12 were not allowed to do that. We never showed them.

13 THE COURT: Did you appeal Judge Katz's ruling?

14 MR. GOMEZ: No, we did not.

15 THE COURT: Mr. Mastro, what is your side of it?

16 MR. MASTRO: Your Honor, I will be very brief. This
17 isn't a new issue to your Honor. Your Honor ruled back on
18 March 13 that --

19 THE COURT: It seems like a lifetime ago.

20 MR. MASTRO: It does to all of us, your Honor, except
21 the new folks who are here. Your Honor ruled, in view of the
22 fact that the Ecuador pollution case is not to be retried here,
23 these videos are not relevant. That's docket entry 901 at
24 pages 2 and 3.

25 Then, of course, this issue was broached. And I know

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1 Ms. Littlepage is new to the case so I would like to see what
2 notice we were given by Amazon Watch. The first we found out
3 that they had improperly obtained our work product was when it
4 ends up being filed in another case and we asserted work
5 product.

6 Then what happens? Despite your Honor's ruling, they
7 try and bring it in before Special Master Katz. And Special
8 Master Katz, after allowing them foundational type questions,
9 expressly ruled, "The videos clearly fall within the work
10 product privilege." That's McMillen deposition, page 196,
11 lines 1 and 2. And he further held expressly, same page, lines
12 3 through 5, that the videos "were made at the direction of an
13 attorney for the purposes of prelitigation investigation."
14 And then there was no appeal, end of story.

15 We have demanded these videos back time and time again
16 after your Honor's ruling and after Special Master Katz's
17 ruling. They have refused even though they have obtained them.
18 We don't know how they obtained them, but obviously in some
19 surreptitious means, and now they are trying to introduce them
20 here. I hope the Court will have none of it. They are beyond
21 the point where they can possibly raise this issue.

22 THE COURT: Let me go to the next point. Assuming I
23 were to disagree so far, what do you say these prove?

24 MS. LITTLEPAGE: There is assertions in Ms. McMillen's
25 witness statement that the plaintiffs -- I don't have her

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1 statement in front of her, but basically she discusses the
2 conduct of the parties at the judicial inspections, and one of
3 the things she talks about is her perception that the
4 plaintiffs would tap their foot at a certain area and make sure
5 that the judicial samples happened at that area.

6 So for the full context, and we are here on the state
7 of mind of Mr. Donziger and what was or was not his state of
8 mind as to the appropriate conduct at the judicial inspections,
9 I think it's important for the Court to understand the context
10 that the defendants were at the judicial inspections with
11 pre-inspection sample data, that they knew where was impacted
12 and where was clean, and that they requested site samples at
13 the judicial inspection process of areas that they knew to be
14 clean.

15 THE COURT: What is the evidence of that?

16 MS. LITTLEPAGE: The document I just discussed with
17 Ms. McMillen.

18 THE COURT: Really?

19 MS. LITTLEPAGE: I think it is some evidence that
20 their expert, in his own judicial inspection report --

21 MS. NEUMAN: I think we are confusing Ms. McMillen's
22 statement.

23 THE COURT: One thing at a time.

24 Continue with what you think they prove and why.

25 MS. LITTLEPAGE: I think that they put a full context

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1 on the assertions and allegations raised as to the conduct --

2 THE COURT: That may be, but so does the
3 constitutional history of Ecuador put a full context on it.

4 What do you think it proves that is material to this
5 case?

6 MS. LITTLEPAGE: I think it proves two things, and we
7 are going to get to the second part in just a minute, but I
8 think it proves that those pre-inspection sample results were
9 not submitted to the court.

10 THE COURT: Are you suggesting there was any
11 requirement that that be done?

12 MS. LITTLEPAGE: No.

13 MR. FRIEDMAN: May I speak?

14 THE COURT: Sure. Go ahead.

15 MR. FRIEDMAN: In my view, there are two ways to look
16 at this information. One would be that Chevron is going ahead
17 to the sites that it knows are going to be inspected. It's
18 taking samples ahead of time so that, to use a euphemism, it
19 can cheat.

20 THE COURT: That's your argument. But in a minute we
21 are going to see why that is at best a stretch.

22 MR. FRIEDMAN: It might be a stretch. I acknowledge
23 that.

24 The other way to look at this evidence is to say there
25 is nothing improper about doing that. If the parties have

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1 knowledge ahead of time that there are areas that are clean,
2 and therefore indicate to the judge ahead of time, it's OK,
3 we'd like you to do here or sort of signal we want you to do
4 here or there, that that's perfectly appropriate.

5 Either one of those helps our case because Chevron's
6 position is that we had ahead knowledge of where the
7 contaminated areas were, and we were signaling for people to do
8 samples there, and that that was improper. So it's either
9 improper or it's cheating. I mean, it's either improper or
10 it's OK, and whichever one it is helps us, and this evidence
11 shows that, in essence, both sides were doing the same thing.

12 MS. LITTLEPAGE: May I add one thing? The
13 pre-inspection videotapes do indicate that Chevron is finding
14 impacted areas, to use Ms. McMillen's words. You do see on the
15 videotape, as they take the samples, there is a discussion of
16 the smell of the oil in the soil and the texture of the soil.
17 There is a closeup of the mud where you can see sort of a
18 viscous fluid to the mud. The pre-inspection videos do show
19 that there is at least advance knowledge on Chevron's part of
20 areas that are potentially impacted and areas that are
21 potentially clean. And then they confirm it with their lab
22 testing.

23 THE COURT: So you're telling me that if you look at
24 the film, you see the dirty areas, and Chevron needed this in
25 order to determine where the dirty areas were?

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1 MR. FRIEDMAN: When you stick the core in.

2 MS. LITTLEPAGE: They go down like ten --

3 THE COURT: I appreciate all the advocacy, but let me
4 as to this first issue, the pre-inspection videos, say the
5 following.

6 Number one, you had your chance with the special
7 master. You argued the issue. You lost. You had the right to
8 appeal. You didn't. It's over on that basis.

9 Secondly, even if you hadn't lost on that basis, which
10 effectively amounts to law of the case, and I were to consider
11 the matter de novo, my view would be that it's obviously work
12 product and you don't get it anyway.

13 Third, I appreciate Mr. Friedman's candid
14 acknowledgement that the argument may be a bit of a stretch
15 with respect to this pre-inspection inspection I guess, right?
16 Actually, I read the whole document you were examining the
17 witness about, not just the parts you highlighted. It's
18 Defendants' Exhibit 592 for the record, the Bjorkman document
19 relating to Sacha Norte 1.

20 Now, you focused on line number 3 on the first page of
21 the table, and you completely ignored the very first thing that
22 is stated there. That the point here was to draw a clean line
23 around the site to show no widespread impacts. And this part
24 you did emphasize. "Locations for perimeter sampling should be
25 chosen to emphasize clean points around the pits when

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1 possible." And then adjacent to that, under sampling
2 activities, it says, To collect soil samples at four or more
3 locations around the sites using locations that the preliminary
4 inspection team has shown to be clean.

5 Now, to me it's crystal clear that the point made in
6 that line is perfectly analogous to what happens when a surgeon
7 operates on a malignant or suspected malignant tumor. There is
8 a tumor. You want to know if it is malignant, and if it is
9 malignant, you want to know how far out, from what is
10 observable with the naked eye and then confirmable
11 pathologically, the tumor extends. And so the surgeon causes
12 the pathologist to test not only the heart of the tumor, which
13 is of course essential to identify the pathology, but what
14 appeared to be clean areas around it to ensure that when the
15 surgeon cuts -- the analogy here being remediates -- you get
16 the whole cancer. The presupposition is here we are testing
17 pits that are, to one degree or another, in colloquial terms,
18 dirty, cancerous using my metaphor. And what this line is
19 talking about is, don't assume that it spreads outward from the
20 pit infinitely. What are the limits?

21 Now, that's very important. It's important to what
22 damage there may have been. It's important to what, if any,
23 remediation there ought to be. It's important to what that
24 remediation might cause. But that's not all that is in this
25 document. Because on the last page of the table, in line

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1 number 7, in sampling activities, it talks about collecting
2 representative samples from within the pit spill area or other
3 potential area of concerns. If plaintiff sample is not a
4 representative sample of pit area conditions, do not take a
5 split of the sample but collect an independent representative
6 sample. And then a little later down it talks again about
7 perimeter sampling.

8 So the suggestion that I took -- maybe it's not what
9 you intended, but that I took -- was that you were suggesting
10 something nefarious about perimeter sampling, the implication
11 being that there was an attempt by perimeter sampling to get a
12 dirty location to test clean, when in fact the thrust of the
13 document on its face is to define what the area of dirt, if
14 there is one, is and beyond which it doesn't extend any
15 further.

16 So, look, you will argue what you're going to argue
17 about it, but it's to me, at least at first blush, and maybe
18 there will be more evidence, just not quite what I at least
19 took the implication of the line of examination to be, perhaps
20 wrongly. But the bottom line of it all is no pre-inspection
21 videos.

22 Now, let's go to your second issue.

23 MS. LITTLEPAGE: My second issue, Judge, is tab 27.
24 It is a collection of --

25 THE COURT: So this is Plaintiff's Exhibit?

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1 MS. LITTLEPAGE: Defendants' Exhibit 1425.

2 THE COURT: Defendants' Exhibit.

3 MS. LITTLEPAGE: Yes, sir.

4 THE COURT: I'm sorry. You're right. We all get
5 conflicted and mixed up on this.

6 MS. LITTLEPAGE: Defendants' Exhibit 1425 is a few, I
7 think I chose 12 or 13, lab results of various different
8 judicial inspection sites. These are all lab results from
9 Chevron's expert's judicial inspections.

10 MS. NEUMAN: Do you mean filed in the record with
11 their report?

12 MS. LITTLEPAGE: Yes. But it's not the report; it's
13 just the lab data.

14 THE COURT: And so?

15 MS. LITTLEPAGE: Judge, I know you heard Mr. Friedman
16 talk about this in opening statement. From reviewing the
17 record, it appears that the Court and Chevron was clear earlier
18 this year of narrowing the focus of this trial. The language
19 being the discrete inquiry was whether there were findings
20 untainted by fraud in the Ecuadorian record that supported the
21 verdict. And having read the Court's order, we have tried to
22 tailor our case to the discrete inquiry that was reflected in
23 that order. And this is Chevron's evidence, and there is no
24 allegation Chevron's experts were tainted by fraud.

25 THE COURT: Not that we have heard so far.

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1 MS. LITTLEPAGE: No allegations in the complaint on
2 that issue.

3 THE COURT: Or the answers.

4 MS. LITTLEPAGE: Or the answers. And this is a series
5 of lab results from Chevron's experts that show elevated levels
6 of various chemicals and products, at various different sites,
7 that is some evidence untainted by fraud in the Ecuadorian
8 record to support the verdict.

9 So narrowing our case according to that inquiry, I
10 would like to move to admit Defendants' Exhibit 1425 to address
11 that specific part of the discrete inquiry.

12 THE COURT: What does Chevron have to say?

13 MR. MASTRO: Your Honor, it seems to me that this goes
14 to the very heart of the line that has been drawn in this case.
15 This is an attempt to cherry pick a few test results and put
16 them into the record. We don't know whether these are sites
17 that Petroecuador continued to work at afterwards, what the
18 sources of the pollution are. This really is just an attempt
19 to cherry pick to litigate the merits at certain sites.

20 We are talking about fraud on a massive scale and the
21 ghostwriting of a court expert's report and then the judgment
22 itself. We are not talking about cherry picking a few data
23 results. Now we are going to have to go back and litigate the
24 dozen results here, and I am going to have to go back and point
25 out how that test result happened to have been a Petroecuador

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1 subsequent pit or the levels were not high enough to constitute
2 something. That is going right to the merits. It's not what
3 we are supposed to be doing and there is not evidence in the
4 record to support an \$18.2 billion judgment. So if we get into
5 these kind of weeds, we are going down a path that both your
6 Honor and we committed not to go.

7 THE COURT: This exhibit is part of the Lago Agrio
8 record, is that right?

9 MS. LITTLEPAGE: Yes, sir.

10 THE COURT: Now, is it being represented to me that
11 this is all there is in that record on that subject?

12 MS. LITTLEPAGE: No, sir. No. But the discrete
13 inquiry in the Court's order says any findings untainted by
14 fraud. I was bringing the Court some findings, certainly not
15 all findings.

16 MR. MASTRO: This isn't a finding.

17 THE COURT: This is a joke, OK. Please understand
18 it's a joke. You're going over to that record and you're
19 tapping your foot by the judge about which part of it you want
20 me to look at. Is that about it?

21 MS. LITTLEPAGE: No, sir. But I don't think there is
22 any allegation that these records are tainted by fraud.

23 THE COURT: I understand. But what about others that
24 may not be tainted by fraud?

25 MR. MASTRO: This isn't a finding at all. This is

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1 just one piece of data.

2 THE COURT: I understand that.

3 MR. FRIEDMAN: Can I address that?

4 THE COURT: Yes.

5 MR. FRIEDMAN: Throughout Judge Zambrano's record he
6 cites Chevron's scientist's reports and data. We haven't
7 collated every single reference, but this is the precise point
8 that we are trying to make. That if the issue is, are there
9 parts of the judgment that are untainted by fraud, if Chevron
10 is saying this is correct information and this is the
11 information that is relied upon in the judgment, then that
12 would seem to be highly relevant. We are not relitigating. We
13 are not asking you to rule who is right about who is
14 responsible for this oil or that oil. We are not asking you to
15 rule on which pits were Texaco's. What we are asking you to
16 look at --

17 THE COURT: That may matter.

18 MR. FRIEDMAN: It may matter. I agree that may
19 matter, but that's a different issue than what we are talking
20 about right now, which is you take Judge Zambrano's order, and
21 you will see all the sites to Chevron's expert data and
22 reports, and we are just connecting the dots and saying, yes,
23 indeed, here is -- I guess if they would stipulate that he got
24 their results right -- well, it's their stuff.

25 THE COURT: Finish your point. Mr. Mastro is

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1 sometimes more expressive than he perhaps should be.

2 MR. FRIEDMAN: My point is simply that one way or
3 another we have to address the question of whether or not that
4 judgment is supportable or not. And we are trying to show you
5 that it's supportable largely by Chevron's own data and
6 scientists, which nobody is claiming is fraudulent.

7 THE COURT: Let's get for the moment to a bottom line.
8 You don't need this witness for this at all, right?

9 MS. LITTLEPAGE: She is the lead scientist. If there
10 was any issue about these results, she was the person in charge
11 of this process.

12 THE COURT: I heard a full day of testimony from her.
13 You don't need her at all. It is what it is, and if I decide
14 it's admissible, it's not going to change. You basically spent
15 the day with her, in the main, in an examination that for the
16 most part didn't have to be done at all, for the most part, not
17 entirely.

18 MS. LITTLEPAGE: That's so hurtful.

19 THE COURT: Full credit for hard work, extensive
20 preparation, but truly, this could have all been argued on the
21 papers in major part. You don't need her for anything here,
22 right?

23 MS. LITTLEPAGE: If the Court does not believe we need
24 any underlying testimony for the data, we do not need her.

25 THE COURT: Do you think there is any necessity for

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1 the data, testimony for the data, assuming it's otherwise
2 admissible?

3 MR. MASTRO: Not from this witness. But the fact of
4 the matter is this data that they are trying to put in is only
5 in the Ecuadorian record attached to experts' reports, experts
6 proffered by Chevron, all of whom interpret that data and
7 conclude that it does not support one whit what is in the
8 judgment. So you couldn't take the data without having the
9 data attached to the expert reports interpreting it and saying
10 to the Ecuadorian court, this data shows you can't enter a
11 judgment for the other side, and then we get into relitigating
12 the merits.

13 THE COURT: Let's focus on this witness.

14 MR. MASTRO: No need for this witness.

15 THE COURT: Right?

16 MS. LITTLEPAGE: Yes, sir.

17 THE COURT: So you can both brief this issue in due
18 course. If I conclude that it should come in, it will come in.
19 If that necessitates other evidence, it will necessitate other
20 evidence, and we will see. I will think about it.

21 MR. MASTRO: Understood.

22 THE COURT: I understand both sides' points.

23 So we are done with this witness, is that right?

24 MS. LITTLEPAGE: Yes, sir.

25 THE COURT: Now, a couple of other things I will say,

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1 and I will say it here.

2 I was handed, Mr. Mastro, a piece of paper this
3 morning relating to Plaintiff's Exhibit 4A, and the suggestion
4 is that you put stuff before me that was very much out of
5 context, that key language was dropped, and I am not asking for
6 a response now, but I want to know the full story about this,
7 and I would like to know it by next week. I take it seriously.
8 That's the first thing.

9 The second thing I have already alluded to. I really
10 do appreciate, Ms. Littlepage, how hard you're working on this
11 and how much preparation has gone into it. You're trying to
12 put in the whole defense case through witnesses who for the
13 most part have no personal knowledge of many of the subjects
14 you're asking about, and that's why we are having the
15 difficulty and the slow progress that we are having, in part.

16 And the other part of it is what I alluded to a day or
17 so ago, and that is that Chevron just couldn't resist the
18 temptation to turn every one of these witness statements into
19 yet another brief with witnesses arguing the case often on the
20 basis -- I shouldn't say often, but in some degree, big or
21 small, on the basis of hearsay and stuff they have read and so
22 forth, and I have already addressed myself to that. And let's
23 try to avoid both. This will go a lot more smoothly. I have
24 no problem with the lawyers, but let's just get on with it.

25 MR. MASTRO: Understood, your Honor.

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1 If I may just briefly say, and then we will give your
2 Honor a fuller report later. First, on the latter point. I
3 promised after these two witnesses to go over all of our
4 already submitted declarations and over the weekend we will
5 give revised ones.

6 THE COURT: Blue pencil, please. I think that will be
7 best, if it's possible.

8 MR. MASTRO: And the new ones that we submitted last
9 night, we did take out paragraphs in at least two of them. So
10 the others that we have already given, and there are 14 others
11 I believe, we will go through all of them, and we will serve
12 them over the weekend and get them to the Court.

13 On the point of the quotation that they use, we have
14 given them the clips we wanted to put in. They have been out
15 there for a long time. The particular clip that we are talking
16 about your Honor saw the very first day I appeared before your
17 Honor. And Mr. Donziger's self-serving comments, things like
18 Texaco bribed the judge, we asked him in his deposition about
19 that and whether he had any --

20 THE COURT: I understand. I even remember it.

21 MR. MASTRO: We didn't take it out of context.

22 THE COURT: I know you asked him at his deposition, I
23 seem to remember that anyway, and that he said he had no
24 evidence of it.

25 MR. MASTRO: Correct.

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1 THE COURT: I understand that.

2 Even assuming that's accurate, and at least for the
3 moment I accept that representation, it's consistent with what
4 I remember, I am troubled by selective editing. Let's just
5 leave it at that.

6 MR. MASTRO: I understand, your Honor. But on the
7 crude clips that we proposed, approximately half of them, they
8 don't have any counterdesignations, and in one sense it's a
9 little bit like a deposition, in the sense that we know what we
10 want to use. Much of what Steve Donziger says on these
11 particular crude outtakes are self-serving, self-promotion,
12 hearsay that would never come in. So we don't want to offer
13 his diatribes about Chevron. I alluded to this in my opening,
14 that the things they say are out of context are his diatribes
15 against Texaco that are totally unsupportable.

16 THE COURT: I didn't want to take up the substance of
17 this this afternoon at all, and I still don't.

18 MR. MASTRO: I am just trying to explain.

19 THE COURT: I just want that addressed.

20 MR. MASTRO: It certainly will be. But they have had
21 every right to designate what they wanted from the crude clips.

22 THE COURT: I have got it. I don't know what actually
23 happened. But when you leave words out of a quote, the custom
24 is to put ellipses in for one thing, and even when you do that,
25 you better be fair in what you're doing. So I just want to

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1 know what happened. I haven't prejudged it one way or the
2 other, but I want to know what happened.

3 The comment with respect to witness statements, there
4 are at least two more of these witness statements. Is there
5 going to be a challenge to Nancy Moore's testimony?

6 MS. LITTLEPAGE: That's my witness, but I will be
7 honest, I haven't reached her yet because I was focusing on the
8 witnesses for this week. You're ahead of me. I don't know.

9 THE COURT: OK.

10 MS. LITTLEPAGE: I can look at it over the weekend.

11 THE COURT: There is another one, Meacham. Is that
12 the former FBI agent that is going to instruct me on the law of
13 RICO?

14 MR. MASTRO: Actually, your Honor, that's not the
15 reason he has been offered. He has been offered as an expert
16 on association in fact enterprises that he has testified about
17 in the past, and was part of putting together such cases for
18 the FBI involved in RICO cases. And in my experiences going
19 back to the U.S. Attorney's Office days, agents -- and
20 Mr. Meacham was for many, many years -- often testified on
21 enterprise, in the association in fact context, on what would
22 constitute an enterprise and how it came together and why it
23 constituted a RICO enterprise. We are not talking about a RICO
24 enterprise that is an existing entity like a corporation being
25 used for criminal activity. We are talking about an

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1 association in fact. And that is not an uncommon form of
2 testimony at a RICO trial, I don't believe.

3 THE COURT: Well, that would come as a surprise to me.
4 And the Second Circuit has had a lot to say in the last couple
5 of years about expert testimony in criminal cases generally. I
6 can't say specifically to association in fact enterprises, but
7 organized crime, drug organizations, and you folks ought to pay
8 attention to that. I certainly understand what the plaintiff's
9 enterprise theory is. You ought to consider whether you need
10 the testimony of that witness. I am not ruling on it now.

11 MR. MASTRO: I understand.

12 THE COURT: Think about it.

13 Mr. Gomez keeps giving me a letter -- I am teasing of
14 course -- every day. It's not really every day. We have
15 dropped 50 more witnesses. I don't have any idea who is on
16 your witness list anymore, Mr. Gomez. You never tell me. You
17 never tell me all these witnesses who have disappeared. We
18 need a witness list. I have got to know where we are.

19 MR. MASTRO: We would appreciate that.

20 THE COURT: We have been through three days now. How
21 long is this going to go, with the benefit of three days of
22 experience? I am hoping to get up to the rate of speed Mr.
23 Gomez is trying to achieve.

24 MR. MASTRO: Of course, we are going to do what we
25 pledged to do at your Honor's direction to narrow some of the

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1 witness declarations. We will take another look at potentially
2 narrowing our list some more, but our questioning has been less
3 than half an hour.

4 THE COURT: I understand that. You have done a fair
5 amount of inviting what the other side has done, for which I
6 can't fault them. And then we have had some problems with
7 formulation of questions, and the whole personal knowledge
8 issue, and I am hoping to do better on that.

9 How long is this going to take?

10 MR. MASTRO: Your Honor, it's still our hope, although
11 the week after next is a week we are only sitting one day, but
12 it's our hope to finish this -- this has taken longer than we
13 expected, but we still are hoping to finish our case within a
14 three week period.

15 THE COURT: You almost got very lucky at the expense
16 of the country, because had the Congress not done what it did
17 last night, that three days in the week after next would have
18 been back in the schedule, but they did, so there we are.

19 MR. MASTRO: I meant, your Honor, basically two more
20 trial weeks.

21 THE COURT: I knew you meant that.

22 MR. FRIEDMAN: Could I ask your Honor, Mr. Mastro said
23 we are only going one day?

24 THE COURT: The last week of October, the first three
25 days of the week, it's no secret, I am sitting on a

DAH8CHE6

McMillen - cross

1 multi-district panel, and therefore often have a multi-district
2 panel commitment that predates this case. So we are at the
3 moment scheduled to sit only Thursday that week. So we are
4 only going to have one day that week. So Mr. Gomez will have
5 plenty of time to get ready.

6 MR. FRIEDMAN: Your Honor, I would prefer to answer
7 your question on Monday. We really are still playing catch-up.

8 THE COURT: Of course you are. I am too, and I have
9 been living with this.

10 MR. FRIEDMAN: I think if the witness statements are
11 narrowed, we can narrow our own issues also over the weekend
12 and be more focused and then be prepared to give you an
13 estimate on Monday.

14 THE COURT: I appreciate that. That will be very
15 helpful.

16 OK. So we will go back in. We will sign off. We
17 will let Ms. McMillen go.

18 The next witness will be?

19 MS. LITTLEPAGE: Mr. Gomez has some questions.

20 MR. GOMEZ: It's very limited. If the other side is
21 willing to stipulate that she doesn't know my clients and
22 hasn't had any communications with them, then we are done with
23 this witness.

24 MR. MASTRO: We are willing to stipulate to that.

25 THE COURT: All right. That's stipulated.

DAH8CHE6

McMillen - cross

1 So who is the next witness after this?

2 MR. MASTRO: Your Honor, Mr. Leonard is the next
3 witness. Mr. Rayner was also going to be on Monday because he
4 had to be, but now he has to move.

5 We have received information that -- I can't talk
6 about that at the moment while Mr. Donziger is here.

7 MR. DONZIGER: Is this a Doe issue?

8 MR. MASTRO: It is a Doe issue.

9 Let me just finish one other point too. We are
10 planning to call Mr. Guerra next week. I think Mr. Zambrano is
11 supposed to be coming by next Saturday for a deposition. Your
12 Honor's order had a provision or a condition but not in the
13 final.

14 THE COURT: That the deposition would be at the
15 courthouse. It's going to be on the weekend. So it's going to
16 have to move out of the courthouse.

17 MR. MASTRO: We can do it at our offices.

18 THE COURT: Any problem with that?

19 MS. LITTLEPAGE: No, sir.

20 THE COURT: So submit a stipulation on the changing of
21 the location.

22 MR. MASTRO: Your Honor also referenced in the order,
23 although not the last paragraph but immediately before it, that
24 we should be receiving documents well enough in advance to be
25 able to use them effectively at the deposition. I did serve a

DAH8CHE6

McMillen - cross

1 subpoena for Mr. Zambrano to bring documents. There has been
2 no commitment to do that. There has been no commitment that he
3 accept that subpoena as opposed to my trial subpoena. So I am
4 getting no documents from Mr. Zambrano in advance of his
5 deposition.

6 THE COURT: What is the story on that?

7 MR. GOMEZ: I am not authorized to accept service of
8 the documents for Mr. Zambrano. I don't represent him.

9 In terms of the documents in the order, my
10 understanding is the only documents you requested were evidence
11 of a valid passport, which we have provided; evidence of the
12 visa, which we are waiting from the embassy to provide to him
13 so he can get it to me; and all the documentation that I have
14 that he had his visa interview and has been in my possession I
15 have provided to the plaintiffs.

16 THE COURT: I am not going to decide anything on the
17 fly relating to documents. Whether he brings documents may or
18 may not have a bearing on the weight that will be accorded to
19 his testimony. That may hold true also with respect to whether
20 or not the defendants produce documents in compliance with my
21 order.

22 MR. MASTRO: Which I also intended to ask about. We
23 do intend to call Mr. Zambrano in our case. He is coming for
24 the deposition, and after the deposition we intend to call him
25 shortly thereafter in our case, and I will cross-examine him.

DAH8CHE6

McMillen - cross

1 We have given Mr. Guerra's witness statement to the
2 parties and to the Court. We will go over that. I don't think
3 he is going to have the same issues that the Chevron witnesses
4 have.

5 THE COURT: Are they both going to testify in Spanish?

6 MR. MASTRO: They are. We have an interpreter here
7 who both sides have used at their depositions. I think that
8 will work fine. It was our intention to put Mr. Guerra -- put
9 him on by declaration. Your Honor said you might have wanted
10 to hear some direct so we were thinking that --

11 THE COURT: I want to hear his direct. I want to hear
12 the direct of both of them.

13 MR. MASTRO: I will be cross-examining him first, your
14 Honor.

15 THE COURT: Zambrano. But Guerra is your witness.

16 MR. MASTRO: Guerra is my witness.

17 I would suggest, for efficiency purposes, since there
18 are over 200 documents associated with Mr. Guerra's declaration
19 that he references and authenticates in his deposition, and
20 some of it is procedural background and history, that what
21 would be the most efficient way to put Mr. Guerra on is we have
22 the declaration. I put him on, and I will start with the
23 entire sequence of his ghost writing for Zambrano in this case,
24 then going through the ghost writing and bribe scandal of the
25 judgment itself. So we cover Guerra's work for Zambrano and

DAH8CHE6

McMillen - cross

1 the plaintiff as a ghost writer in the case in his first tenure
2 and then as the facilitator of the bribe and the ghost writing
3 so that we cover that period. That would expedite putting him
4 on as opposed to --

5 (Continued on next page)

DAHLCH7

1 THE COURT: Leaving out what?

2 MR. MASTRO: It's really, it's really his earlier
3 history, his earlier history as a judge in this case, other
4 things that he did. It's the core of his story.

5 THE COURT: I see.

6 MR. MASTRO: And they can cross-examine anything they
7 want to.

8 THE COURT: I understand what you're saying.

9 Any reason not to do it that way?

10 MS. FRIEDMAN: I think it's all right to do it that
11 way with the caveat that we're going to get into -- if the
12 declaration is written the way some of the other ones were,
13 we're going to be back in the same boat. But generally
14 speaking, yes, no problem with that.

15 THE COURT: You're editing that declaration.

16 MR. MASTRO: We're going to take a look at that too.
17 I don't think it has the same problems.

18 THE COURT: I guess not actually.

19 MR. MASTRO: They've had them for a week.

20 THE COURT: They've had them for a long time.

21 MR. MASTRO: That's appreciated, your Honor.

22 THE COURT: I don't have any problem with it in
23 principle. If there's a problem with it in practice, we'll
24 deal with it.

25 MS. LITTLEPAGE: Judge, seeing as Judge Zambrano is

DAHLCHE7

1 doing his deposition on Saturday the 26th and we're not sitting
2 Monday, Tuesday, or Wednesday, will he be just -- he's got to
3 go back to Ecuador. Will he be on the stand on Thursday?

4 MR. MASTRO: It would be my intention to do him next.

5 THE COURT: November 1.

6 MS. LITTLEPAGE: Think it's the 31st.

7 MR. MASTRO: Halloween.

8 MS. NEUMAN: We're dark on the 1st.

9 MR. MASTRO: Yes.

10 THE COURT: I can't remember the calendar.

11 MR. MASTRO: You're out.

12 THE COURT: Monday, Tuesday, Wednesday, whatever that
13 is.

14 MS. NEUMAN: 28th, 29th, 30th.

15 THE COURT: So the 31st, Halloween. Okay.

16 And you're going to finish him that day?

17 MR. GOMEZ: Your Honor, if I may, I'm a little
18 concerned about stretching out the date between the deposition
19 and the actual trial testimony because it ends up being cost
20 prohibitive. We are -- we are paying for his flight and his
21 stay. I don't know, one, I don't know that we can afford two
22 trips at this point in time. Two, I don't know whether
23 Mr. Zambrano is allowed by his employer to take a trip the 26th
24 and then go back and then come back again if there's a long
25 span of time.

DAHLCHE7

1 I guess what we need to do is what I would prefer is
2 to do it all in one trip. But that's not possible, then I have
3 to talk to Mr. Zambrano.

4 MR. MASTRO: Your Honor, I'm just trying to meet the
5 Court's schedule, but I don't have a problem in principle to
6 doing him on the 2nd and the 3rd and having him in here on the
7 4th and the 5th to testify.

8 THE COURT: Of what?

9 MR. MASTRO: November. It will be the following week.
10 I don't in principle have a problem with that. And then
11 hopefully they would actually produce documents so I can
12 actually use them at a deposition.

13 THE COURT: Look, you should talk to each other about
14 this. See what you can work out. Bear in mind you got to take
15 into account the schedules of the special masters because
16 they're not necessarily available whenever you want to have
17 them at this point.

18 MR. MASTRO: I understand, your Honor. And then if we
19 could just address the one issue outside the presence of
20 Mr. Donziger.

21 THE COURT: Okay. Thanks, Mr. Donziger.

22 MR. DONZIGER: Just noting my continued objection to
23 this aspect of this procedure.

24 THE COURT: You've made your point.

25 (Pages 520-527 SEALED by order of the Court)

DAHLCHE9

(In the robing room)

THE COURT: That part of the discussion is over.

Mr. Donziger, Mr. Mastro wanted to raise something else.

MR. MASTRO: Sure. We are, your Honor, consistent with the direction your Honor gave, the parties have agreed to work on our exhibits.

THE COURT: Yes. Go ahead.

MR. MASTRO: And the one question that I needed the Court's guidance on was the Court had granted Mr. Donziger's motion to supplement his exhibit list and his witness list. We had a relatively discrete motion to supplement to add certain exhibits and a couple of witnesses.

THE COURT: I'm just waiting for answering papers. Are there going to be any answering papers?

MS. LITTLEPAGE: Judge, we do not object.

THE COURT: That's easy.

You too, Mr. Gomez?

MR. GOMEZ: Yes, your Honor.

MR. MASTRO: Since your Honor has permitted the defense to look into to question the Borja issue, we did not typically designate about the Borja issue. But there are a few discrete exhibits or deposition designations that we would have on that issue that we would now present since that was ruled to be part of the case.

DAHLCHE9

1 MS. LITTLEPAGE: We're happy that look at that, and I
2 doesn't think there's going to be an issue.

3 MS. FRIEDMAN: No procedural issue.

4 THE COURT: It's much appreciated.

5 MR. MASTRO: And, your Honor, we will look to pare our
6 witness list back even more. We cut it about a third already.
7 And I commit to do that by Sunday and apprise the Court.

8 THE COURT: Easy for you to say.

9 MR. MASTRO: Your Honor, nothing is easy on this case,
10 but I hope the defense will make a similar commitment to come
11 down from their 71 witnesses that are still left.

12 And we will get by Sunday the revised witness
13 statements that we've already put in. And we will notify the
14 defense over the weekend order of witnesses and adjustments to
15 next week's schedule.

16 THE COURT: Fine. Okay.

17 MR. MASTRO: Much appreciated.

18 MR. DONZIGER: Can I raise one quick issue. I want to
19 inform your Honor that I am in a bit of a bind in that I'm
20 preparing my declaration, which is going to be large with lots
21 of exhibits and stuff. Next week I might be either not here or
22 in and out of court depending on how much work I get done. No
23 disrespect intended. I would prefer to be here the whole time.
24 But if I'm not here, it's only because I'm working on that.

25 THE COURT: I understand it. I appreciate it. Thank

DAHLCHE9

1 you for telling me.

2 MR. MASTRO: One last thing.

3 THE COURT: Is there no end to this?

4 MR. MASTRO: I'm sorry, your Honor.

5 Mr. Pate, the general counsel at Chevron, got served
6 with a subpoena yesterday. We will move to quash. Does your
7 Honor want that on an expedited schedule or just a normal
8 schedule?

9 THE COURT: What is going on with this?

10 MR. MASTRO: I don't know how he can be a proper
11 witness, but anyway.

12 MS. FRIEDMAN: I think somebody on our team got
13 overenthusiastic, your Honor, and we'll work with Mr. Mastro
14 about that issue.

15 THE COURT: Okay.

16 MR. MASTRO: Thank you, your Honor.

17 (In open court)

18 THE COURT: Be seated, folks.

19 I understand from counsel that there are no further
20 questions for the witness, right?

21 MS. LITTLEPAGE: That's correct, sir.

22 THE COURT: Ms. McMillen, thank you very much. You
23 are excused.

24 (Witness excused)

25 THE COURT: I believe we have nothing else this

DAHLCHE9

1 evening. So I will see you all at 9:30 Monday morning. Thank
2 you all very much.

3 (Adjourned to October 21, 2013 at 9:30 a.m.)
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3367347
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3201384
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3203389
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495, redacted391
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3206396
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3208398
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3300412
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310451
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429456
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431459

DEFENDANT EXHIBITS

Exhibit No.

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729345

733362

732366

735369

1410378

1416427

871431

872433

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613441

612442

1417464

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